

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID B. TRACEY, DANIEL GUENTHER,  
MARIA T. NICHOLSON, CORRINNE R.  
FOGG, AND VAHIK MINAIYAN,  
individually and as representatives of a  
class of participants and beneficiaries on  
behalf of the MIT Supplemental 401(k)  
Plan,

*Plaintiffs,*

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, THE MIT  
SUPPLEMENTAL 401(K) PLAN  
OVERSIGHT COMMITTEE, THE  
ADMINISTRATIVE COMMITTEE,  
ISRAEL RUIZ, MARC BERNSTEIN,  
GLENN DAVID ELLISON, S.P. KOTHARI,  
GUNTHER ROLAND, LORRAINE A.  
GOFFE-RUSH, GLEN SHOR, PAMELA  
WELDON, THOMAS M. WIEAND, AND  
BARTON ZWIEBACH,

*Defendants.*

1. Plaintiffs David B. Tracey, Daniel Guenther, Maria T. Nicholson, Corrinne R. Fogg, and Vahik Minaiyan, individually and as representatives of a class of participants and beneficiaries of the MIT Supplemental 401(k) Plan (the “Plan”),<sup>1</sup> bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plan against Defendants Massachusetts Institute of Technology, the MIT Supplemental 401(k) Plan Oversight Committee, the Administrative Committee, Israel Ruiz, Marc Bernstein, Glenn David Ellison, S.P. Kothari, Gunther Roland, Lorraine A. Goffe-

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<sup>1</sup> The Plan is also referred to as the Massachusetts Institute of Technology Supplemental 401(k) Plan.

Rush, Glen Shor, Pamela Weldon, Thomas M. Wieand, and Barton Zwiebach for breach of fiduciary duties under ERISA.<sup>2</sup>

2. The duties of loyalty and prudence are the “highest known to the law” and require fiduciaries to have “an eye single to the interests of the participants and beneficiaries.” *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). As fiduciaries to the Plan, Defendants are obligated to act for the exclusive benefit of participants and beneficiaries and to ensure that Plan expenses are reasonable and the Plan’s investments are prudent. The marketplace for retirement plan services is established and competitive. Billion-dollar-defined contribution plans, like the Plan, have tremendous bargaining power to demand low-cost administrative and investment management services. Instead of using the Plan’s bargaining power to benefit participants and beneficiaries, Defendants allowed unreasonable expenses to be charged to participants for administration of the Plan, and retained high-cost and poorly performing investments compared to available alternatives.

3. To remedy these fiduciary breaches, Plaintiffs, individually and as representatives of a class of participants and beneficiaries of the Plan, bring this action on behalf of the Plan under 29 U.S.C. §1132(a)(2) and (3) to enforce Defendants’ personal liability under 29 U.S.C. §1109(a) to make good to the Plan all losses resulting from each breach of fiduciary duty and to restore to the Plan any profits made through Defendants’ use of Plan assets. In addition, Plaintiffs seek such other equitable or remedial relief for the Plan as the Court may deem appropriate.

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<sup>2</sup> The Employee Retirement Income Security Act, 29 U.S.C. §§1001–1461.

## **JURISDICTION AND VENUE**

4. This Court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331 because it is an action under 29 U.S.C. §1132(a)(2) and (3).

5. This District is the proper venue for this action under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(b) because it is the district in which the subject Plan is administered, where at least one of the alleged breaches took place, and where at least one defendant resides.

## **PARTIES**

### **The MIT Supplemental 401(k) Plan**

6. The Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. §1002(2)(A) and §1002(34).

7. The Plan is established and maintained under a written document in accordance with 29 U.S.C. §1102(a)(1).

8. The Plan provides for retirement income for eligible employees of Massachusetts Institute of Technology (“MIT”). Eligible employees include those who: (1) are scheduled to work at least 50% of the normal full-time schedule at MIT or will have 1,000 hours or more of paid service in a calendar year; or (2) are paid by MIT as an employee.

9. A participant’s retirement income depends upon contributions from each employee, employer matching contributions, and from the performance of the Plan’s investment options, net of fees and expenses.

10. As of December 31, 2014, the Plan had \$3.6 billion in net assets and 18,268 participants with account balances. As such, it is one of the largest defined contribution plans in the United States, ranking in the top 1% of all defined contribution plans based on total plan assets that filed a Form 5500 with the Department of Labor. Plans of such great size are commonly referred to as “jumbo plans”.

### **Plaintiffs**

11. David B. Tracey resides in West Roxbury, Massachusetts, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

12. Daniel Guenther resides in Brookline, Massachusetts, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

13. Maria T. Nicholson resides in North Reading, Massachusetts, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

14. Corrine R. Fogg resides in Ardmore, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

15. Vahik Minaiyan resides in Burbank, California, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

## Defendants

16. MIT is a non-profit corporation organized under Massachusetts law with its principal place of business in Cambridge, Massachusetts. MIT is the named fiduciary under the Plan responsible for the control, management and administration of the Plan. MIT is the plan sponsor and plan administrator under 29 U.S.C. §1002(16)(A)(i), and upon information and belief, has exclusive responsibility and complete discretionary authority to control the operation, management and administration of the Plan, with all powers necessary to enable it properly to carry out such responsibilities, including the selection and compensation of the providers of administrative services to the Plan and the selection, monitoring, and removal of the investment options made available to participants for the investment of their contributions and provision of their retirement income.

17. MIT is a fiduciary to the Plan because it exercised discretionary authority or discretionary control respecting the management of the Plan or exercised authority or control respecting the management or disposition of its assets, and has discretionary authority or discretionary responsibility in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

18. The MIT Supplemental 401(k) Plan Oversight Committee (“Oversight Committee”) was established by the Executive Committee of the Board of Trustees of MIT. The Oversight Committee is responsible for the selection, monitoring, and retention of Plan investment options. Its members are appointed by the President of MIT.

19. Current members of the Oversight Committee include: Israel Ruiz, Marc Bernstein, Glenn David Ellison, S.P. Kothari, Gunther Roland, Lorraine A. Goffe-Rush, Glen Shor, Pamela Weldon, Thomas M. Wieand, and Barton Zwiebach.

20. The Oversight Committee and its individual members are fiduciaries to the Plan because they exercised discretionary authority or discretionary control respecting the management of the Plan or exercised authority or control respecting the management or disposition of its assets, and have discretionary authority or discretionary responsibility in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

21. The Administrative Committee is responsible for the administration of the Plan, including determining the eligibility for participation and for benefits, directing the Plan's trustee to pay benefits, and interpreting provisions of the Plan, among other duties.

22. The Administrative Committee and its individual members are fiduciaries to the Plan because they exercised discretionary authority or discretionary control respecting the management of the Plan or exercised authority or control respecting the management or disposition of its assets, and have discretionary authority or discretionary responsibility in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

23. Because the MIT entities, or their individual committee members, described above have acted as alleged herein as agents of MIT, all defendants are collectively referred to hereafter as "Defendants".

## FACTS APPLICABLE TO ALL COUNTS

### I. The Plan's investment structure

24. Defendants select investment options into which participants' investments are directed, including those investment options that are removed from the Plan. These investments are designated by MIT as available investment alternatives offered under the Plan.

25. Prior to July 2015, Defendants selected and retained approximately 340 investment options, which included mutual funds, collective trusts, and two custom funds (Bond Oriented Balanced Fund and Diversified Stock Fund) administered at the direction of MIT by Fidelity Management Trust Company. These custom funds invest in underlying mutual funds or collective trusts, and for years, included underlying funds managed by Fidelity.

26. Over 300 mutual funds were included in the Plan across 40 fund families. The mutual fund options included *retail* share class mutual funds, despite the massive size of the Plan. These retail share class mutual funds are designed for small individual investors and are identical in every respect to institutional share class funds, except for much higher fees.

27. The mutual funds included in the Plan charge varying amounts for investment management, distribution, marketing, and other expenses, depending on the investment at issue and share class. Mutual funds have shareholders who are not participants in the Plan, or any retirement plan, and who purchase shares as a result of the funds' marketing efforts. However, all shareholders in mutual funds, including participants in the Plan, pay these expenses. Marketing costs for

mutual funds provide no benefit to MIT plan participants because they have no control over what funds are selected for inclusion in the Plan.

28. Effective July 20, 2015, Defendants eliminated hundreds of mutual funds provided to Plan participants and offered a new investment lineup to participants. This new lineup includes 37 investment options, of which 19 were previously offered.

**II. Fidelity Investments had and continues to have a comprehensive role in the Plan and extensive relationship with MIT.**

29. Fidelity Investments (“Fidelity”) is a privately owned company based in Boston, Massachusetts that provides financial services to individual and institutional investors. The company was founded by Edward C. Johnson II and continues to be operated by the Johnson family. Edward C. Johnson III served as Chief Executive Officer (“CEO”) until 2014 when his daughter, Abigail Johnson, assumed the position, which she currently holds.

30. Seventeen years ago, in December 1998, Defendants selected Fidelity to serve as the Plan’s recordkeeper to provide administrative and recordkeeping services. Fidelity began providing these services effective April 1, 1999.

31. In addition to transferring the Plan’s administrative and recordkeeping services to Fidelity at that time, Defendants also provided extensive investment management fees to Fidelity, thereby providing Fidelity with very large revenues for over a decade and a half. Rather than bearing the investment expenses charged by the Plan’s investment options, as it had done in prior years, effective April 1, 1999, MIT transferred the responsibility for payment of these expenses to

Plan participants. Following the transition, Fidelity became and continued to be for over 16 years the *primary* provider of mutual fund options in the Plan. For instance, as of December 31, 2014, of the 300 mutual funds included in the Plan, over *180* were *Fidelity* mutual funds.

32. Rather than conducting a thorough, reasoned process for selecting a service provider and determining which funds should be offered in the Plan, Defendants specifically selected Fidelity because it “*did business with [MIT] or was headquartered locally.*”<sup>3</sup> While such a rationale—not acting in the exclusive interest of participants—may be used for MIT’s own assets, it is a fundamental breach of ERISA’s stringent fiduciary duties—the highest under the law—when handling someone else’s money.

33. Fidelity’s business relationship continued well after it was selected. Since it was selected as the Plan’s recordkeeper, Fidelity has donated *hundreds of thousands of dollars* to MIT. Former CEO Edward C. Johnson III and current CEO Abigail Johnson serve among the trustees of the Edward C. Johnson Fund. In 2009, for example, the Edward C. Johnson Fund contributed \$100,000 to MIT for “Conferences”. In 2010, the Edward C. Johnson Fund contributed \$220,000 for “Conservation-Arts & Sciences” and \$25,000 for “Program Support” to MIT.

34. The Fidelity Foundation and Fidelity Investments Charitable Gift Fund are also supporters of the MIT OpenCourseWare, a web-based publication of MIT course content. Fidelity is a research supporter of MIT’s Center for Information

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<sup>3</sup> MIT News, *Fidelity Chosen to Manage MIT Supplemental 401(k) Plan as of April 1* (Dec. 16, 1998)(emphasis added), available at <http://news.mit.edu/1998/401k-1216>.

Systems Research and member of MIT's Media Lab. In addition, Fidelity served as one of the corporate associates of MIT's Sloan School of Management "provid[ing] critical support for capital projects, new initiatives, innovative educational activities, diversity fellowships, sponsorships for student conferences and special events, and other needs identified by the School."<sup>4</sup>

35. Moreover, Fidelity CEO Abigail Johnson for nine years has had direct responsibility over the governance of MIT. Since 2007, she has served as a member of the Board of Trustees for MIT (also referred to as the MIT Corporation), where she chairs the visiting committee of MIT's Sloan School of Management. Members of the Board of Trustees "hold a fiduciary duty to govern MIT, to oversee the stewardship of MIT's assets for MIT's present and perpetual well-being and stability, and to ensure that MIT adheres to the purposes for which it was established."<sup>5</sup>

36. As a member of the Board of Trustees, Ms. Johnson has influenced decisions concerning the operation of MIT. For instance, according to MIT President L. Rafael Reif, she has offered "high-level guidance on the financial situation" following the 2008 financial crisis and "has helped shape changes at the business school".<sup>6</sup>

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<sup>4</sup> MIT Sloan School of Management, Annual Philanthropy Report 2009 (Spring 2010), available at <http://mitsloan.mit.edu/alumnimagazine/pdf/Spring2010-FullWithoutNotes.pdf>.

<sup>5</sup> See MIT Bylaws, §1.1, available at <http://web.mit.edu/corporation/bylaws/by1.html>.

<sup>6</sup> Beth Healy, *Abigail Johnson, After Years of Training, Gets to Put Her Stamp on Fidelity*, Boston Globe (Dec. 5, 2014), available at <https://www.bostonglobe.com/business/2014/12/05/abigail-johnson-after-years-training-gets-put-her-stamp-fidelity/Unb5tRwrL8iby2mTHoqMGN/story.html>.

37. Ms. Johnson therefore wears multiple hats. She is responsible for maximizing revenue to MIT as a member of the Board of Trustees. She is directly in a position to, and has, driven donations to MIT from Fidelity and family resources. Furthermore, MIT, which acts through its Board of Trustees, is the named fiduciary with ultimate responsibility over the selection and retention of Plan investment options. Thus, as a member of the Board of Trustees, she stands to personally benefit her family and her company, Fidelity, from Defendants' use of Fidelity and its funds—over 100—placed in the Plan.

38. Upon information and belief, Fidelity and Ms. Johnson have other relationships with MIT apart from those identified above.

39. Fidelity's relationship with MIT, and the benefits MIT has derived from it, has also secured Fidelity's position as the Plan's recordkeeper without any competitive comparison from outside service providers. Without engaging in any competitive bidding process for over 17 years, Defendants have caused the Plan to use Fidelity as the recordkeeper and to pay unreasonable administrative, as well as investment management, expenses.

**III. Defendants selected and retained a large number of duplicative and unnecessary investment options, including over 100 Fidelity mutual fund options, diluting the Plan's ability to pay lower fees, driving revenue to Fidelity, and confusing participants.**

40. Defendants provided a dizzying array of duplicative funds in the same investment style, thereby depriving the Plan of its bargaining power associated with offering a single option in each investment style that significantly reduces investment fees, and leading to "decision paralysis" for participants. Prior to July

2015, over 340 investment options were placed in the core lineup by Defendants. Of these options, over 180 were *Fidelity* funds. The Plan's hundreds of investment options were provided in the following asset classes: target date and asset allocation funds, large cap domestic equities, mid cap domestic equities, small cap domestic equities, international equities, fixed income, money market, real estate, sector funds, and stable value.

41. In comparison, according to Callan Investments Institute's 2015 Defined Contribution Trends survey, defined contribution plans in 2014 had on average 15 investment options, excluding target date funds. Callan Investments Institute, *2015 Defined Contribution Trends*, at 28 (2015).<sup>7</sup> This provides choice of investment style to participants while maintaining a larger pool of assets in each investment style and avoiding confusion.

42. A larger pool of assets in each investment style significantly reduces fees paid by participants. By consolidating duplicative investments of the same investment style into a single investment option, the Plan would then have the ability to command lower-cost investments, such as collective trusts, separately managed accounts, and low-cost institutional share classes of the selected mutual fund options.

43. Prudent fiduciaries of large defined contribution plans engage in a detailed due diligence process to select and retain investments for a plan based on the risk, investment return, and expenses of available investment alternatives. Overall, the investment lineup should provide participants with the ability to

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<sup>7</sup> Available at <https://www.callan.com/research/files/990.pdf>.

diversify their portfolio appropriately while benefiting from the size of the pooled assets of other employees and retirees.

44. Within each asset class and investment style deemed appropriate for the participant-directed retirement plan, prudent fiduciaries make a reasoned determination and select a prudent investment option. Unlike Defendants, prudent fiduciaries do not select and retain numerous investment options for a single asset class and investment style. When many investment options in a single investment style are plan options, fiduciaries lose the bargaining power to obtain lower investment management expenses for that style.

45. In addition, providing multiple options in a single investment style adds unnecessary complexity to the investment lineup and leads to participant confusion. See, e.g., Donald B. Keim and Olivia S. Mitchell, *Simplifying Choices in Defined Contribution Retirement Plan Design*, at 3 (Nov. 30, 2015)(recognizing that “too many choices can create confusion and distraction”);<sup>8</sup> The Standard, *Fixing Your 403(b) Plan: Adopting a Best Practices Approach*, at 2 (“Numerous studies have demonstrated that when people are given too many choices of anything, they lose confidence or make no decision.”); Michael Liersch, *Choice in Retirement Plans: How Participant Behavior Differs in Plans Offering Advice, Managed Accounts, and Target-Date Investments*, T. Rowe Price Retirement Research, at 2 (Apr.

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<sup>8</sup> Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2697680](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2697680).

2009)(“Offering too many choices to consumers can lead to decision paralysis, preventing consumers from making decisions.”).<sup>9</sup>

46. Defendants provided duplicative investments in virtually every major asset class and investment style, including balanced/asset allocation (19–20 options, including 12 Fidelity funds), fixed income and high yield bond (43–49 options, including 26 Fidelity funds), international (47–55 options, including 30 Fidelity funds), large cap domestic equities (75–78 options, including 31 Fidelity funds), mid cap domestic equities (32–33 options, including 11 Fidelity funds), small cap domestic equities (24–26 options, including 7 Fidelity funds), real estate (3–4 Fidelity options), money market (8 Fidelity options), sector funds (41 Fidelity options), stable value (1 Fidelity option), and target date investments (Fidelity and Vanguard funds). Such a dizzying array of duplicative funds in a single investment style violates the well-recognized industry principle that too many choices harm participants, and can lead to “decision paralysis”.

47. Defendants also included multiple actively managed funds within the same investment style and asset class. Having many actively managed funds in the Plan within the same investment style results in the Plan effectively having an index fund return, while paying much higher fees for active management than the fees charged by a passive index fund, which has much lower fees because there is no need for active management and its higher fees.

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<sup>9</sup> Available at [http://www.behavioralresearch.com/Publications/Choice\\_in\\_Retirement\\_Plans\\_April\\_2009.pdf](http://www.behavioralresearch.com/Publications/Choice_in_Retirement_Plans_April_2009.pdf).

48. Moreover, Defendants retained multiple passively managed index options in the same investment style. For the large cap blend asset class, for example, Defendants retained five index funds, three of which were Fidelity index funds. Rather than a fund whose investment manager actively selects stocks or bonds to beat an index benchmark, passively managed index funds hold a representative sample of securities in a specific index, such as the S&P 500 index. The sole investment strategy of an index fund is to track the performance of a specific market index. No stock selection or research is needed, unlike investing in actively managed funds. Thus, index fund fees are substantially lower.

49. Since index funds merely hold the same securities in the same proportions as the index,<sup>10</sup> having multiple index funds in the Plan provides no benefit to participants. Instead, it hurts participants by diluting the Plan's ability to obtain lower rates for a single index fund of that style because the amount of assets in any one such fund is smaller than the aggregate would be in that investment style. Moreover, multiple managers holding stocks that mimic the S&P 500 or a similar index would pick the same stocks in the same proportions as the index. Thus, there is no value in offering separate index funds in the same investment style.

50. The inefficient and costly investment structure of the Plan caused significant harm to the Plan and its participants in the form of unreasonable investment management fees and performance losses compared to readily available

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<sup>10</sup> Another example of an index is the Dow Jones Industrial Average.

lower-cost alternatives. This harm and the substantial losses to the Plan are firmly illustrated after evaluating the recent 2015 fund lineup changes.

51. Effective July 20, 2015, Defendants eliminated *hundreds* of investment options provided in the Plan, including over 180 *Fidelity* funds. Only the Fidelity Growth Fund remained. The new investment lineup includes 37 investment options, of which 19 were previously offered. The consolidated investment options include Vanguard collective trust target date funds, two custom funds (Bond Oriented Balanced Fund and Diversified Stock Fund), twelve Vanguard funds, and nine actively managed funds offered by non-Vanguard investment managers. The assets of the funds removed from the Plan were transferred or “mapped” to low-cost Vanguard funds, and for some investments, to the Wellington High Yield Bond Fund. The replaced high-cost mutual fund options did not suddenly become imprudent for this jumbo 401(k) plan in July 2015. Instead, their unreasonable cost and poor performance was present for years.

52. The following table identifies the fees charged by the removed investment option in comparison to the corresponding fund in the new core lineup as disclosed by Defendants.<sup>11</sup> Overall, Plan participants were charged fees *13% to 15,000%* in excess of those charged by investments selected after Defendants conducted a comprehensive review of the Plan’s structure and eliminated Fidelity funds and duplicative and excessively priced investment options in the Plan.

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<sup>11</sup> See MIT 2015 Investment Transition Guide, at 25–37, available at <http://web.mit.edu/hr/benefits/401k-transition-guide.pdf>.

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Aberdeen Global Fixed Income Fund (Instl Service) (CGFIX)	162 bps	Vanguard Target Trust Plus	7 bps	2214%
Aberdeen US Equity Fund (A) (GXXAX)	125 bps	Vanguard Total Stock Market Index Trust	1 bp	12400%
Aberdeen US Equity Fund (Instl Service) (GXXIX)	107 bps	Vanguard Total Stock Market Index Trust	1 bp	10600%
Alger Capital Appreciation Institutional Fund (Instl) (ALARX)	116 bps	Vanguard Total Stock Market Index Trust	1 bp	11500%
Alger Mid Cap Growth Institutional Fund (Instl) (ALMRX)	130 bps	Vanguard Total Stock Market Index Trust	1 bp	12900%
Alger Small Cap Growth Institutional Fund (I) (ALSRX)	124 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1450%
AllianzGI NFJ Small-Cap Value Fund (Admin) (PVADX)	111 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1288%
AllianzGI NFJ Small-Cap Value Fund (Instl) (PSVIX)	86 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	975%
American Beacon Balanced Fund (Inv) (AABPX)	93 bps	Vanguard Target Trust Plus	7 bps	1229%
American Beacon International Equity (Inv) (AAIPX)	106 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	960%
American Beacon Large Cap Value Fund (Inv) (AAGPX)	94 bps	Vanguard Total Stock Market Index Trust	1 bp	9300%
American Beacon Short Term Bond Fund (Inv) (AALPX)	91 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	1200%

<sup>12</sup> One basis point is equal to 1/100<sup>th</sup> of one percent (or 0.01%).

<b>Plan Investment</b>	<b>Plan Fee<sup>12</sup></b>	<b>New Core Lineup Transition Option</b>	<b>Lower-Cost Fund Fee</b>	<b>Plan's Excess Cost</b>
American Beacon Small Cap Value Fund (Inv) (AVPAX)	117 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1363%
American Century Large Company Value (Inv) (ALVIX)	85 bps	Vanguard Total Stock Market Index Trust	1 bp	8400%
American Century Small Company (Inv) (ASQIX)	87 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	988%
American Century Ultra (Inv) (TWCUX)	101 bps	Vanguard Total Stock Market Index Trust	1 bp	10000%
AMG Managers Bond Fund (Service) (MGFIX)	103 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1960%
AMG Managers Cadence Capital Appreciation (Admin) (MCFYX)	107 bps	Vanguard Total Stock Market Index Trust	1 bp	10600%
AMG Managers Cadence Mid Cap (Service) (MCMYX)	102 bps	Vanguard Total Stock Market Index Trust	1 bp	10100%
AMG Managers Special Equity Fund (Service) (MGSEX)	150 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1775%
Ariel (Inv) (ARGFX)	103 bps	Vanguard Total Stock Market Index Trust	1 bp	10200%
Ariel Appreciation (Inv) (CAAPX)	113 bps	Vanguard Total Stock Market Index Trust	1 bp	11200%
Artisan International (Inv) (ARTIX)	117 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1070%
Artisan Mid Cap Fund (Inv) (ARTMX)	120 bps	Vanguard Total Stock Market Index Trust	1 bp	11900%

<b>Plan Investment</b>	<b>Plan Fee<sup>12</sup></b>	<b>New Core Lineup Transition Option</b>	<b>Lower-Cost Fund Fee</b>	<b>Plan's Excess Cost</b>
Baron Asset (BARAX)	131 bps	Vanguard Total Stock Market Index Trust	1 bp	13000%
Baron Growth Fund (Retail) (BGRFX)	129 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1513%
Calvert Balanced Portfolio (A) (CSIFX)	118 bps	Vanguard Target Trust Plus	7 bps	1586%
Calvert Capital Accumulation (A) (CCAFX)	143 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	794%
Calvert Equity Portfolio (A) (CSIEX)	117 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	631%
Calvert International Equity (A) (CWVGX)	168 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1580%
Calvert Small Cap (A) (CCVAX)	161 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	906%
ClearBridge Value Trust (FI) (LMVFX)	109 bps	Vanguard Total Stock Market Index Trust	1 bp	10800%
Columbia Acorn Select Fund (Z) (ACTWX)	103 bps	Vanguard Total Stock Market Index Trust	1 bp	10200%
Columbia Acorn USA (Z) (AUSAX)	107 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1238%
Columbia Income Opportunities Fund (Z) (CIOZX)	88 bps	Wellington High Yield Bond	60 bps	47%
Columbia Small Cap Core Fund (Z) (SMCEX)	113 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1313%
CRM Mid Cap Value Fund (Inv) (CRMMX)	104 bps	Vanguard Total Stock Market Index Trust	1 bp	10300%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Deutsche Core Equity (S) (SCDGX)	59 bps	Vanguard Total Stock Market Index Trust	1 bp	5800%
Deutsche CROCI Equity Dividend Fund (A) (KDHAX)	117 bps	Vanguard Total Stock Market Index Trust	1 bp	11600%
Deutsche CROCI International (S) (SCINX)	90 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	800%
Deutsche Global Small Cap (S) (SGSCX)	125 bps	Vanguard Target Trust Plus	7 bps	1686%
Domini Social Equity (Inv) (DSEFX)	120 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	650%
Dreyfus Mid Cap Growth Fund (F) (FRSPX)	119 bps	Vanguard Total Stock Market Index Trust	1 bp	11800%
Dreyfus Research Growth Fund (A) (DWOAX)	118 bps	Vanguard Total Stock Market Index Trust	1 bp	11700%
Dreyfus Research Growth Fund (Z) (DREQX)	95 bps	Vanguard Total Stock Market Index Trust	1 bp	9400%
Fidelity Asset Manager 20% (FASIX)	53 bps	Vanguard Target Trust Plus	7 bps	657%
Fidelity Asset Manager 30% (FTANX)	55 bps	Vanguard Target Trust Plus	7 bps	686%
Fidelity Asset Manager 40% (FFANX)	56 bps	Vanguard Target Trust Plus	7 bps	700%
Fidelity Asset Manager 50% (FASMX)	66 bps	Vanguard Target Trust Plus	7 bps	843%
Fidelity Asset Manager 60% (FSANX)	73 bps	Vanguard Target Trust Plus	7 bps	943%
Fidelity Asset Manager 70% (FASGX)	73 bps	Vanguard Target Trust Plus	7 bps	943%
Fidelity Asset Manager 85% (FAMRX)	75 bps	Vanguard Target Trust Plus	7 bps	971%
Fidelity Balanced K (FBAKX)	46 bps	Vanguard Target Trust Plus	7 bps	557%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Blue Chip Growth (K) (FDGKX)	68 bps	Vanguard Total Stock Market Index Trust	1 bp	6700%
Fidelity Blue Chip Value (FBCVX)	73 bps	Vanguard Total Stock Market Index Trust	1 bp	7200%
Fidelity Canada (FICDX)	98 bps	Vanguard Target Trust Plus	7 bps	1300%
Fidelity Capital & Income (FAGIX)	71 bps	Wellington High Yield Bond	60 bps	18%
Fidelity Capital Appreciation (K) (FCAKX)	70 bps	Vanguard Total Stock Market Index Trust	1 bp	6900%
Fidelity Cash Reserves Management (FDRXX)	37 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	270%
Fidelity China Region (FHKCX)	101 bps	Vanguard Target Trust Plus	7 bps	1343%
Fidelity Conservative Income Bond (FCONX)	40 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	471%
Fidelity Contrafund (K) (FCNKX)	54 bps	Vanguard Total Stock Market Index Trust	1 bp	5300%
Fidelity Convertible Securities (FCVSX)	58 bps	Vanguard Target Trust Plus	7 bps	729%
Fidelity Corporate Bond (FCBFX)	45 bps	Vanguard Target Trust Plus	7 bps	543%
Fidelity Disciplined Equity (K) (FDEKX)	39 bps	Vanguard Total Stock Market Index Trust	1 bp	3800%
Fidelity Diversified International (K) (FDIKX)	78 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	680%
Fidelity Dividend Growth (K) (FDGKX)	44 bps	Vanguard Total Stock Market Index Trust	1 bp	4300%
Fidelity Emerging Asia (FSEAX)	104 bps	Vanguard Target Trust Plus	7 bps	1386%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Emerging Europe, Middle East, Africa (FEMEX)	137 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1042%
Fidelity Emerging Markets (K) (FEDDX)	86 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	617%
Fidelity Emerging Markets Discovery (FEDDX)	148 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1133%
Fidelity Equity Dividend Income (K) (FETKX)	52 bps	Vanguard Total Stock Market Index Trust	1 bp	5100%
Fidelity Equity-Income (K) (FEIKX)	54 bps	Vanguard Total Stock Market Index Trust	1 bp	5300%
Fidelity Europe (FIEUX)	97 bps	Vanguard Target Trust Plus	7 bps	1286%
Fidelity Export & Multinational (K) (FEXKX)	64 bps	Vanguard Total Stock Market Index Trust	1 bp	6300%
Fidelity Fifty (FFTYX)	83 bps	Vanguard Total Stock Market Index Trust	1 bp	8200%
Fidelity Floating Rate High Income (FFRHX)	69 bps	Vanguard Target Trust Plus	7 bps	886%
Fidelity Focused High Income (FHIFX)	83 bps	Wellington High Yield Bond	60 bps	38%
Fidelity Focused Stock (FTQGX)	78 bps	Vanguard Total Stock Market Index Trust	1 bp	7700%
Fidelity Four-in-One Index (FFNOX)	24 bps	Vanguard Target Trust Plus	7 bps	243%
Fidelity Freedom K 2005 (FFKvx)	50 bps	Vanguard Target Trust Plus	7 bps	614%
Fidelity Freedom K 2010 (FFKCX)	53 bps	Vanguard Target Trust Plus	7 bps	657%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Freedom K 2015 (FKVFX)	55 bps	Vanguard Target Trust Plus	7 bps	686%
Fidelity Freedom K 2020 (FFKDX)	57 bps	Vanguard Target Trust Plus	7 bps	714%
Fidelity Freedom K 2025 (FKTWX)	61 bps	Vanguard Target Trust Plus	7 bps	771%
Fidelity Freedom K 2030 (FFKEX)	65 bps	Vanguard Target Trust Plus	7 bps	829%
Fidelity Freedom K 2035 (FKTHX)	66 bps	Vanguard Target Trust Plus	7 bps	843%
Fidelity Freedom K 2040 (FFKFX)	66 bps	Vanguard Target Trust Plus	7 bps	843%
Fidelity Freedom K 2045 (FFKGX)	66 bps	Vanguard Target Trust Plus	7 bps	843%
Fidelity Freedom K 2050 (FFKHX)	65 bps	Vanguard Target Trust Plus	7 bps	829%
Fidelity Freedom K 2055 (FDENX)	66 bps	Vanguard Target Trust Plus	7 bps	843%
Fidelity Freedom K Income (FFKAX)	44 bps	Vanguard Target Trust Plus	7 bps	529%
Fidelity Fund (K) (FFDKX)	41 bps	Vanguard Total Stock Market Index Trust	1 bp	4000%
Fidelity Global Balanced (FGBLX)	99 bps	Vanguard Target Trust Plus	7 bps	1314%
Fidelity Global Bond (FGBFX)	109 bps	Vanguard Target Trust Plus	7 bps	1457%
Fidelity Global Commodity Stock (FFGCX)	111 bps	Vanguard Target Trust Plus	7 bps	1486%
Fidelity Global Equity Income (FGILX)	116 bps	Vanguard Target Trust Plus	7 bps	1557%
Fidelity Global High Income (FGHNX)	95 bps	Wellington High Yield Bond	60 bps	58%
Fidelity Global Strategies (FDYSX)	85 bps	Vanguard Target Trust Plus	7 bps	1114%
Fidelity GNMA (FGMNX)	45 bps	Vanguard Target Trust Plus	7 bps	543%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Government Income (FGOVX)	45 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	800%
Fidelity Government Money Market (SPAXX)	42 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	320%
Fidelity Growth & Income (K) (FGIKX)	53 bps	Vanguard Total Stock Market Index Trust	1 bp	5200%
Fidelity Growth Discovery (K) (FGDKX)	68 bps	Vanguard Total Stock Market Index Trust	1 bp	6700%
Fidelity Growth Strategies (K) (FAGKX)	53 bps	Vanguard Total Stock Market Index Trust	1 bp	5200%
Fidelity High Income (SPHIX)	72 bps	Wellington High Yield Bond	60 bps	20%
Fidelity Independence (K) (FDFKX)	64 bps	Vanguard Total Stock Market Index Trust	1 bp	6300%
Fidelity Inflation Protected Bond (FINPX)	45 bps	Vanguard Inflation Protected Securities (Instl) (VIPIX)	7 bps	543%
Fidelity Institutional Money Market (FMPXX)	21 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	110%
Fidelity Intermediate Bond (FTHRX)	45 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	800%
Fidelity Intermediate Government Income (FSTGX)	45 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	800%
Fidelity International Bond (FINUX)	106 bps	Vanguard Total Intl Bond Index Fund (VTABX)	19 bps	458%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity International Capital Appreciation (FIVFX)	114 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1040%
Fidelity International Discovery (K) (FIDKX)	78 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	680%
Fidelity International Enhanced Index (FIENX)	62 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	520%
Fidelity International Growth (FIGFX)	104 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	940%
Fidelity International Real Estate (FIREX)	114 bps	Vanguard REIT Index (Instl) (VGSNX)	8 bps	1325%
Fidelity International Small Cap (FISMX)	122 bps	Vanguard Target Trust Plus	7 bps	1643%
Fidelity International Small Cap Opportunities (FSCOX)	130 bps	Vanguard Target Trust Plus	7 bps	1757%
Fidelity International Value (FIVLX)	96 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	860%
Fidelity Investment Grade Bond (FBNDX)	45 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	800%
Fidelity Japan (FJPNX)	90 bps	Vanguard Target Trust Plus	7 bps	1186%
Fidelity Japan Smaller Companies (FJSCX)	100 bps	Vanguard Target Trust Plus	7 bps	1329%
Fidelity Large Cap Core Enhanced Index (FLCEX)	46 bps	Vanguard Total Stock Market Index Trust	1 bp	4500%

<b>Plan Investment</b>	<b>Plan Fee<sup>12</sup></b>	<b>New Core Lineup Transition Option</b>	<b>Lower-Cost Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity Large Cap Growth Enhanced Index (FLGEX)	45 bps	Vanguard Total Stock Market Index Trust	1 bp	4400%
Fidelity Large Cap Stock (FLCSX)	88 bps	Vanguard Total Stock Market Index Trust	1 bp	8700%
Fidelity Large Cap Value Enhanced Index (FLVEX)	47 bps	Vanguard Total Stock Market Index Trust	1 bp	4600%
Fidelity Latin America (FLATX)	108 bps	Vanguard Target Trust Plus	7 bps	1443%
Fidelity Leveraged Company Stock (K) (FLCKX)	67 bps	Vanguard Total Stock Market Index Trust	1 bp	6600%
Fidelity Low-Priced Stock (K) (FLPKX)	72 bps	Vanguard Total Stock Market Index Trust	1 bp	7100%
Fidelity Magellan (K) (FMGKX)	42 bps	Vanguard Total Stock Market Index Trust	1 bp	4100%
Fidelity Managed Income Portfolio II - Class 1	59 bps	Vanguard Target Trust Plus	7 bps	743%
Fidelity Mega Cap Stock (FGRTX)	68 bps	Vanguard Total Stock Market Index Trust	1 bp	6700%
Fidelity Mid Cap Enhanced Index (FMEIX)	62 bps	Vanguard Mid Cap Index (Adm) (VIMAX)	9 bps	590%
Fidelity Mid Cap Value (FSMVX)	80 bps	Vanguard Total Stock Market Index Trust	1 bp	7900%
Fidelity Mid-Cap Stock (K) (FKMCX)	68 bps	Vanguard Total Stock Market Index Trust	1 bp	6700%
Fidelity Money Market (SPRXX)	42 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	320%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Money Market Trust Retirement Government Money Market Portfolio (FGMXX)	42 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	320%
Fidelity Mortgage Securities (FMSFX)	45 bps	Vanguard Target Trust Plus	7 bps	543%
Fidelity NASDAQ Composite Index (FNCMX)	55 bps	Vanguard Total Stock Market Index Trust	1 bp	5400%
Fidelity New Markets Income (FNMIX)	90 bps	Vanguard Target Trust Plus	7 bps	1186%
Fidelity New Millennium (FMILX)	84 bps	Vanguard Total Stock Market Index Trust	1 bp	8300%
Fidelity Nordic (FNORX)	99 bps	Vanguard Target Trust Plus	7 bps	1314%
Fidelity OTC (K) (FOCKX)	65 bps	Vanguard Total Stock Market Index Trust	1 bp	6400%
Fidelity Overseas (K) (FOSKX)	88 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	780%
Fidelity Pacific Basin (FPBFX)	118 bps	Vanguard Target Trust Plus	7 bps	1586%
Fidelity Puritan (K) (FPUKX)	46 bps	Vanguard Target Trust Plus	7 bps	557%
Fidelity Real Estate Income (FRIFX)	83 bps	Vanguard REIT Index (Instl) (VGSNX)	8 bps	938%
Fidelity Real Estate Investment Portfolio (FRESX)	80 bps	Vanguard REIT Index (Instl) (VGSNX)	8 bps	900%
Fidelity Select Air Transportation (FSAIX)	87 bps	Vanguard Target Trust Plus	7 bps	1143%
Fidelity Select Automotive (FSAVX)	84 bps	Vanguard Target Trust Plus	7 bps	1100%
Fidelity Select Banking (FSRBX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Select BioTech (FBIOX)	76 bps	Vanguard Target Trust Plus	7 bps	986%
Fidelity Select Brokerage & Investment Management (FSLBX)	79 bps	Vanguard Target Trust Plus	7 bps	1029%
Fidelity Select Chemicals (FSCHX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Fidelity Select Communications Equipment (FSDCX)	92 bps	Vanguard Target Trust Plus	7 bps	1214%
Fidelity Select Computers (FDCPX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Construction and Housing (FSHOX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Fidelity Select Consumer Discretionary (FSCPX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Consumer Finance (FSVLX)	85 bps	Vanguard Target Trust Plus	7 bps	1114%
Fidelity Select Consumer Staples (FDFAX)	79 bps	Vanguard Target Trust Plus	7 bps	1029%
Fidelity Select Defense & Aerospace (FSDAX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Fidelity Select Electronics (FSELX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Energy (FSENX)	80 bps	Vanguard Target Trust Plus	7 bps	1043%
Fidelity Select Energy Services (FSESX)	80 bps	Vanguard Target Trust Plus	7 bps	1043%
Fidelity Select Environment and Alternative Energy (FSLEX)	97 bps	Vanguard Target Trust Plus	7 bps	1286%
Fidelity Select Financial Services (FIDSX)	86 bps	Vanguard Target Trust Plus	7 bps	1129%
Fidelity Select Gold (FSAGX)	94 bps	Vanguard Target Trust Plus	7 bps	1243%
Fidelity Select Health Care (FSPHX)	77 bps	Vanguard Target Trust Plus	7 bps	1000%
Fidelity Select Industrial Equipment (FSCGX)	79 bps	Vanguard Target Trust Plus	7 bps	1029%

<b>Plan Investment</b>	<b>Plan Fee<sup>12</sup></b>	<b>New Core Lineup Transition Option</b>	<b>Lower-Cost Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity Select Industrials (FCYIX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Fidelity Select Insurance (FSPCX)	83 bps	Vanguard Target Trust Plus	7 bps	1086%
Fidelity Select IT Services (FBSOX)	84 bps	Vanguard Target Trust Plus	7 bps	1100%
Fidelity Select Leisure (FDLSX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Materials (FSDPX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Medical Delivery (FSHCX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Medical Equipment & Systems (FSMEX)	80 bps	Vanguard Target Trust Plus	7 bps	1043%
Fidelity Select Money Market (FSLXX)	30 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	200%
Fidelity Select Multimedia (FBMPX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Fidelity Select Natural Gas (FSNGX)	84 bps	Vanguard Target Trust Plus	7 bps	1100%
Fidelity Select Natural Resources (FNARX)	84 bps	Vanguard Target Trust Plus	7 bps	1100%
Fidelity Select Pharmaceutical (FPHAX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Retailing (FSRPX)	83 bps	Vanguard Target Trust Plus	7 bps	1086%
Fidelity Select Software & Computers (FSCSX)	79 bps	Vanguard Target Trust Plus	7 bps	1029%
Fidelity Select Technology (FSPTX)	80 bps	Vanguard Target Trust Plus	7 bps	1043%
Fidelity Select Telecommunications (FSTCX)	85 bps	Vanguard Target Trust Plus	7 bps	1114%
Fidelity Select Transportation (FSRFX)	85 bps	Vanguard Target Trust Plus	7 bps	1114%
Fidelity Select Utilities (FSUTX)	82 bps	Vanguard Target Trust Plus	7 bps	1071%
Fidelity Select Wireless (FWRLX)	88 bps	Vanguard Target Trust Plus	7 bps	1157%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Short Term Bond (FSHBX)	45 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	543%
Fidelity Small Cap Discovery (FSCRX)	101 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1163%
Fidelity Small Cap Enhanced Index (FCPEX)	73 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	813%
Fidelity Small Cap Growth (FCPGX)	91 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1038%
Fidelity Small Cap Stock (FSLCX)	68 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	750%
Fidelity Small Cap Value (FCPVX)	109 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1263%
Fidelity Spartan 500 Index (Instl) (FXSIX)	5 bps	Vanguard Total Stock Market Index Trust	1 bp	400%
Fidelity Spartan Emerging Markets Index (Adv) (FPMAX)	35 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	192%
Fidelity Spartan Extended Market Index (Adv) (FSEVX)	7 bps	Vanguard Total Stock Market Index Trust	1 bp	600%
Fidelity Spartan Global ex-US Index (Adv) (FSGDX)	28 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	180%
Fidelity Spartan Inflation-Protected Index (Adv) (FSIYX)	10 bps	Vanguard Inflation Protected Securities (Instl) (VIPIX)	7 bps	43%
Fidelity Spartan Intermediate Treasury Index (Adv) (FIBAX)	10 bps	Vanguard Target Trust Plus	7 bps	43%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Spartan International Index (Adv) (FSIVX)	17 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	70%
Fidelity Spartan Long Term Treasury Bond Index (Adv) (FLBAX)	10 bps	Vanguard Target Trust Plus	7 bps	43%
Fidelity Spartan Mid Cap Index (Adv) (FSCKX)	21 bps	Vanguard Mid Cap Index (Adm) (VIMAX)	9 bps	133%
Fidelity Spartan Real Estate Index (Adv) (FSRVX)	19 bps	Vanguard REIT Index (Instl) (VGSNX)	8 bps	138%
Fidelity Spartan Short-Term Treasury Bond Index Fund (Adv) (FSBAX)	10 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	43%
Fidelity Spartan Small Cap Index (Adv) (FSSVX)	34 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	325%
Fidelity Spartan Total Market Index (Adv) (FSTVX)	7 bps	Vanguard Total Stock Market Index Trust	1 bp	600%
Fidelity Spartan US Bond Index (Instl) (FXSTX)	7 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	40%
Fidelity Stock Selector All Cap (K) (FSSKX)	58 bps	Vanguard Total Stock Market Index Trust	1 bp	5700%
Fidelity Stock Selector Large Cap Value (FSLVX)	72 bps	Vanguard Total Stock Market Index Trust	1 bp	7100%
Fidelity Stock Selector Mid Cap (FSSMX)	81 bps	Vanguard Total Stock Market Index Trust	1 bp	8000%
Fidelity Stock Selector Small Cap (FDSCX)	73 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	813%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Strategic Dividend & Income (FSDIX)	74 bps	Vanguard Total Stock Market Index Trust	1 bp	7300%
Fidelity Strategic Income (FSICX)	69 bps	Wellington High Yield Bond	60 bps	15%
Fidelity Strategic Real Return (FSRRX)	77 bps	Vanguard Inflation Protected Securities (Instl) (VPIX)	7 bps	1000%
Fidelity Telecom & Utilities (FIUIX)	76 bps	Vanguard Target Trust Plus	7 bps	986%
Fidelity Total Bond (FTBFX)	45 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	800%
Fidelity Total Emerging Markets (FTEMX)	173 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1342%
Fidelity Total International Equity (FTIEX)	104 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	940%
Fidelity Treasury Only Money Market (FDLXX)	42 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	320%
Fidelity Trend (FTRNX)	75 bps	Vanguard Total Stock Market Index Trust	1 bp	7400%
Fidelity U.S. Equity Index Commingled Pool (Class 1)	4 bps	Vanguard Total Stock Market Index Trust	1 bp	300%
Fidelity US Government Reserves (FGRXX)	32 bps	Vanguard Prime Money Market (Instl) (VMRXX)	10 bps	220%
Fidelity Value (K) (FVLKX)	62 bps	Vanguard Total Stock Market Index Trust	1 bp	6100%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Fidelity Value Discovery (K) (FVDKX)	66 bps	Vanguard Total Stock Market Index Trust	1 bp	6500%
Fidelity Value Strategies (K) (FVSKX)	53 bps	Vanguard Total Stock Market Index Trust	1 bp	5200%
Fidelity Worldwide (FWWFX)	96 bps	Vanguard Target Trust Plus	7 bps	1271%
FPA Crescent Fund (FPACX)	123 bps	Vanguard Target Trust Plus	7 bps	1657%
Franklin Mutual Global Discovery Fund (A) (TEDIX)	128 bps	Vanguard Target Trust Plus	7 bps	1729%
Franklin Mutual Shares Fund (A) (TESIX)	109 bps	Vanguard Total Stock Market Index Trust	1 bp	10800%
Franklin Small Mid Cap Growth (A) (FRSGX)	96 bps	Vanguard Mid Cap Index (Adm) (VIMAX)	9 bps	967%
Invesco Charter Fund (A) (CHTRX)	109 bps	Vanguard Total Stock Market Index Trust	1 bp	10800%
Invesco Diversified Dividend Fund (Inv) (LCEIX)	78 bps	Vanguard Total Stock Market Index Trust	1 bp	7700%
Invesco Global Small & Mid Cap Growth Fund (A) (AGAAX)	137 bps	Vanguard Target Trust Plus	7 bps	1857%
Invesco Mid Cap Core Equity Fund (A) (GTAGX)	122 bps	Vanguard Total Stock Market Index Trust	1 bp	12100%
Invesco Mid Cap Growth Fund (A) (VGRAX)	121 bps	Vanguard Total Stock Market Index Trust	1 bp	12000%
Invesco Small Cap Growth Fund (Inv) (GTSIX)	121 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1413%
Invesco Van Kampen American Franchise Fund (A) (VAFAX)	108 bps	Vanguard Total Stock Market Index Trust	1 bp	10700%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Invesco Van Kampen Comstock Fund (A) (ACSTX)	83 bps	Vanguard Total Stock Market Index Trust	1 bp	8200%
Invesco Van Kampen Equity and Income Fund (A) (ACEIX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
Invesco Van Kampen Growth and Income Fund (A) (ACGIX)	85 bps	Vanguard Total Stock Market Index Trust	1 bp	8400%
Invesco Van Kampen Value Opportunities Fund (A) (VVOAX)	125 bps	Vanguard Total Stock Market Index Trust	1 bp	12400%
Janus Balanced Fund (S) (JABRX)	108 bps	Vanguard Target Trust Plus	7 bps	1443%
Janus Enterprise Fund (S) (JGRTX)	117 bps	Vanguard Total Stock Market Index Trust	1 bp	11600%
Janus Flexible Bond Fund (T) (JAFIX)	70 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1300%
Janus Forty Fund (S) (JARTX)	102 bps	Vanguard Total Stock Market Index Trust	1 bp	10100%
Janus Global Research Fund (S) (JWGRX)	127 bps	Vanguard Target Trust Plus	7 bps	1714%
Janus Overseas Fund (S) (JIGRX)	93 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	830%
John Hancock Small Company (A) (JCSAX)	146 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1725%
Loomis Sayles Small Capital Value Fund (Retail) (LSCRX)	134 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1575%
Lord Abbett Mid Cap Value Fund (A) (LAVLX)	123 bps	Vanguard Total Stock Market Index Trust	1 bp	12200%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Morgan Stanley Institutional Core Plus Fixed Income Portfolio (P) (MFXAX)	111 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	2120%
Morgan Stanley Institutional Emerging Markets Fund (P) (MMKBX)	178 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1383%
Morgan Stanley Institutional Fund, Inc. Active International Allocation Portfolio (P) (MSIBX)	125 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1150%
Morgan Stanley Institutional Fund, Inc. International Equity Portfolio (P) (MIQBX)	125 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1150%
Morgan Stanley Institutional Global Strategist Portfolio (P) (MBAAX)	114 bps	Vanguard Target Trust Plus	7 bps	1529%
Morgan Stanley Institutional Growth (A) (MSEGX)	96 bps	Vanguard Total Stock Market Index Trust	1 bp	9500%
Morgan Stanley Institutional Mid Cap Growth (P) (MACGX)	100 bps	Vanguard Total Stock Market Index Trust	1 bp	9900%
Morgan Stanley Institutional Small Company Growth Fund (P) (MSSMX)	135 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1588%
Neuberger Berman Core Bond Fund (Inv) (NCRIX)	115 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	2200%
Neuberger Berman Focus Fund (Trust) (NBFCX)	111 bps	Vanguard Total Stock Market Index Trust	1 bp	11000%
Neuberger Berman Genesis Fund (Trust) (NBGEX)	110 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1275%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Neuberger Berman Guardian Fund (Trust) (NBGTX)	106 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	563%
Neuberger Berman Mid Cap Growth Fund (Trust) (NBMTX)	101 bps	Vanguard Total Stock Market Index Trust	1 bp	10000%
Neuberger Berman Partners Fund (Trust) (NBPTX)	108 bps	Vanguard Total Stock Market Index Trust	1 bp	10700%
Neuberger Berman Socially Responsive (Trust) (NBSTX)	103 bps	Vanguard FTSE Social Index (Instl) (VFTNX)	16 bps	544%
Oakmark Equity and Income Fund (I) (OAKBX)	74 bps	Vanguard Target Trust Plus	7 bps	957%
Oakmark Fund (I) (OAKMX)	87 bps	Vanguard Total Stock Market Index Trust	1 bp	8600%
Oakmark Select Fund (I) (OAKLX)	95 bps	Vanguard Total Stock Market Index Trust	1 bp	9400%
Perkins Mid Cap Value Fund (T) (JMCVX)	74 bps	Vanguard Total Stock Market Index Trust	1 bp	7300%
PIMCO Global Bond (Unhedged) Fund (Admin) (PADMINX)	81 bps	Vanguard Target Trust Plus	7 bps	1057%
PIMCO High Yield Fund (Admin) (PHYAX)	80 bps	Wellington High Yield Bond	60 bps	33%
PIMCO Long Term US Government (Adm) (PLGBX)	74 bps	Vanguard Target Trust Plus	7 bps	957%
PIMCO Low Duration (Adm) (PLDAX)	71 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	914%
PIMCO Total Return (Adm) (PTRAX)	71 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1320%
Rice Hall James Micro Cap Portfolio (Instl) (RHJSX)	154 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1825%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Royce Low-Priced Stock Fund (Service) (RYLPX)	151 bps	Vanguard Total Stock Market Index Trust	1 bp	15000%
RS Small Cap Growth Fund Class (A) (RSEGX)	141 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1663%
Schroder Emerging Market Equity Fund (Inv) (SEMNX)	140 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1067%
Strategic Advisers Core Multi-Manager (FLAUX)	122 bps	Vanguard Total Stock Market Index Trust	1 bp	12100%
Strategic Advisers Emerging Markets Fund of Funds (FLILX)	238 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1883%
Strategic Advisers Growth Multi-Manager (FMELX)	84 bps	Vanguard Total Stock Market Index Trust	1 bp	8300%
Strategic Advisers Income Opportunity Fund of Funds (FSADX)	502 bps	Wellington High Yield Bond	60 bps	737%
Strategic Advisers Small Mid Cap Multi- Manager (FNAPX)	130 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1525%
Strategic Advisers Value Multi-Manager (FKMOX)	132 bps	Vanguard Total Stock Market Index Trust	1 bp	13100%
TCW Select Equities Fund (N) (TGCNX)	113 bps	Vanguard Total Stock Market Index Trust	1 bp	11200%
TCW Small Cap Growth Fund (N) (TGSNX)	146 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1725%
Templeton Developing Markets (A) (TEDMX)	171 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1325%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Templeton Foreign Fund (A) (TEMFX)	116 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1060%
Templeton Foreign Smaller Companies Fund (A) (FINEX)	167 bps	Vanguard Target Trust Plus	7 bps	2286%
Templeton Global Bond Fund (A) (TPINX)	91 bps	Vanguard Target Trust Plus	7 bps	1200%
Templeton Growth Fund, Inc. (A) (TEPLX)	103 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	930%
Templeton World Fund (A) (TEMWX)	105 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	950%
Touchstone Focused Fund (Y) (TFFYK)	103 bps	Vanguard Total Stock Market Index Trust	1 bp	10200%
Touchstone International Small Cap Fund (Y) (TNSYX)	146 bps	Vanguard Target Trust Plus	7 bps	1986%
USAA Cornerstone Moderately Aggressive Fund (USCRX)	126 bps	Vanguard Target Trust Plus	7 bps	1700%
USAA Emerging Markets Fund (USEMX)	152 bps	Vanguard Emerging Markets Index (Instl) (VEMIX)	12 bps	1167%
USAA GNMA Trust Fund (USGNX)	47 bps	Vanguard Target Trust Plus	7 bps	571%
USAA Growth Fund (USAAX)	112 bps	Vanguard Total Stock Market Index Trust	1 bp	11100%
USAA Income Fund (USAIX)	59 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1080%
USAA Income Stock Fund (USISX)	80 bps	Vanguard Total Stock Market Index Trust	1 bp	7900%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
USAA International Fund (USIFX)	116 bps	Vanguard Total Intl Stock Index Fund (Instl Plus) (VTPSX)	10 bps	1060%
Vanguard Growth Index (Adm) (VIGAX)	9 bps	Vanguard Growth Index (Instl) (VIGIX)	8 bps	13%
Vanguard Institutional Index (Instl) (VINIX)	4 bps	Vanguard Total Stock Market Index Trust	1 bp	300%
Vanguard Target Retirement 2010 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2015 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2020 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2025 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2030 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2035 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2040 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2045 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement 2050 Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Target Retirement Income Trust II	11 bps	Vanguard Target Trust Plus	7 bps	57%
Vanguard Total Stock Market Index (Instl) (VITSX)	4 bps	Vanguard Total Stock Market Index Trust	1 bp	300%
Vanguard Total Stock Market Index Trust	2 bps	Vanguard Total Stock Market Index Trust	1 bp	100%
Vanguard Value Index (Adm) (VVIAX)	9 bps	Vanguard Value Index Instl	8 bps	13%
Vanguard Wellington (Adm) (VWENX)	18 bps	Vanguard Target Trust Plus	7 bps	157%

Plan Investment	Plan Fee <sup>12</sup>	New Core Lineup Transition Option	Lower-Cost Fund Fee	Plan's Excess Cost
Vanguard Windsor II (Adm) (VWNAX)	28 bps	Vanguard Total Stock Market Index Trust	1 bp	2700%
Wells Fargo Advantage Common Stock Fund (Inv) (STCSX)	136 bps	Vanguard Total Stock Market Index Trust	1 bp	13500%
Wells Fargo Advantage Discovery Fund (Inv) (STDIX)	131 bps	Vanguard Total Stock Market Index Trust	1 bp	13000%
Wells Fargo Advantage Government Securities Fund (Inv) (STVSX)	92 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1740%
Wells Fargo Advantage Growth Fund (Inv) (SGROX)	124 bps	Vanguard Total Stock Market Index Trust	1 bp	12300%
Wells Fargo Advantage Large Cap Growth Fund (Inv) (STRFX)	128 bps	Vanguard Total Stock Market Index Trust	1 bp	12700%
Wells Fargo Advantage Opportunity Fund (Inv) (SOPFX)	133 bps	Vanguard Total Stock Market Index Trust	1 bp	13200%
Wells Fargo Advantage Short-Term Bond Fund (Inv) (SSTBX)	84 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	1100%
Wells Fargo Advantage Small Cap Value Fund (Inv) (SSMVX)	141 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	8 bps	1663%
Wells Fargo Advantage Ultra Short Income Fund (Inv) (STADX)	81 bps	Vanguard Short-Term Bond Index (Instl) (VBITX)	7 bps	1057%
Western Asset Core Bond Fund (FI) (WAPIX)	83 bps	Vanguard Total Bond Market Index (Instl Plus) (VBMPX)	5 bps	1560%

53. Based on the conduct of prudent fiduciaries of large defined contribution plans, Defendants should have conducted a review of the Plan's

investment structure many years before 2015 and eliminated duplicative and unnecessary investment offerings, instead of placing and retaining the vast number of funds in the Plan and selecting Fidelity funds for most of them. There was no prudent or loyal reason that Defendants failed to engage in this process long before July 2015, and before 2010. Had Defendants consolidated the Plan's investment options into those provided in the revised investment lineup, Plan participants would have saved over *\$8 million* in fees in 2014 alone, and many more millions since 2010.

54. The impact of excessive fees on employees' and retirees' retirement assets is dramatic. The U.S. Department of Labor has noted that a 1% higher level of fees over a 35-year period makes a 28% difference in retirement assets at the end of a participant's career. U.S. Dep't of Labor, *A Look at 401(k) Plan Fees*, at 1–2 (Aug. 2013).<sup>13</sup>

55. Apart from the unreasonable fees charged to Plan participants as a result of Defendants' failure to consolidate the Plan's investment options, Plan participants incurred significant performance losses in several major asset classes where duplicative and/or inappropriate plan investment vehicles were offered for this jumbo 401(k) plan. For instance, Defendants retained approximately 24–26 small cap equity options, including 7 Fidelity funds, approximately 32–33 mid cap equity options, including 11 Fidelity funds, and 75–78 large cap equity options, including 31 Fidelity options. Had Defendants conducted a review of these Plan investment options at least as of 2010, removed duplicative options and mapped

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<sup>13</sup> Available at <http://www.dol.gov/ebsa/pdf/401kfeesemployee.pdf>.

their assets to the lower-cost investment alternative later selected by Defendants after they consolidated the Plan's investment lineup in July 2015, Plan participants would have avoided over \$20 million in performance losses. See *supra* ¶52.

56. In addition, Defendants retained approximately 41 *Fidelity* sector (or "select") funds and 10 *Fidelity* international specialty funds until July 2015 when Defendants removed these options and mapped their assets to the dramatically lower-cost Vanguard target date funds. See *supra* ¶52. *Fidelity* select or sector funds refer to investments that focus on one particular segment of the economy and invest in securities issued by companies concentrated in that segment. For example, these sector funds included: the *Fidelity Select Gold Fund*, the *Fidelity Select Energy Fund*, the *Fidelity Select Energy Services Fund*, the *Fidelity Select Natural Gas Fund*, and the *Fidelity Select Natural Resources Fund*, among others. The *Fidelity* international specialty funds refer to investments that invest in companies concentrated in a particular region or country located throughout the world. For example, these international specialty funds included: the *Fidelity Latin American Fund*, the *Fidelity Canada Fund*, the *Fidelity China Region Fund*, the *Fidelity Emerging Asia Fund*, the *Fidelity Japan Fund*, and the *Fidelity Europe Fund*, among others. Had Defendants conducted a review of these Plan investment options at least as of 2010, determined that they were inappropriate plan investment vehicles for this jumbo 401(k) plan, and subsequently replaced these options in favor of the lower-cost Vanguard target date funds, Plan participants would have avoided over \$40 million in performance losses.

57. Overall, Defendants failed to pool the assets invested in duplicative investment options for the same investment style into a single investment option and eliminate unnecessary investment options, as set forth in ¶46, which caused Plan participants to pay in excess of \$40 million of their retirement savings in unreasonable investment expenses, and in excess of \$40 million in performance losses.<sup>14</sup> As part of this, Defendants drove revenue from participants' retirement assets to Fidelity and the Johnson family, while receiving donations from the Johnson family and Fidelity.

**IV. Defendants have admitted that the prior Plan structure caused unreasonable fees to be charged to the Plan.**

58. Defendants expressly recognized that providing *hundreds* of investment options caused the Plan to pay unreasonable investment management fees in violation of their fiduciary obligations owed to Plan participants. They also admit that this inefficient structure deprived the Plan of its bargaining power associated with consolidating assets into a core set of investment options and caused participant confusion.

59. When describing the reasons for the 2015 Plan changes, Defendants stated that the changes served to accomplish three main objectives:

- Position MIT for increasingly demanding legal and regulatory standards applicable to 401(k) plans.
- Create opportunities for lower investment costs and higher overall value to participants by consolidating assets into fewer funds. **With assets**

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<sup>14</sup> Plan losses have been brought forward to the present value using the investment returns of the S&P 500 index to compensate participants who have not been reimbursed for their losses. This is because the excessive fees participants paid would have remained in Plan investments growing with the market.

**dispersed as they are today, it is not possible to take full advantage of participants' collective purchasing power.**

- Respond to feedback from faculty and staff that the **vast number of choices offered in the current line-up is confusing**. MIT's goal is to offer enough choice to accommodate our diverse community while making it easier for participants to choose cost-effective options that fit their personal goals, financial profile and risk tolerance.

...

#### WHY THE CHANGE?

- **Position MIT to satisfy evolving legal standards**<sup>15</sup>
- **Reduce overall investment costs and increase value for participants**
- **Make investment choices for participants clearer and simpler**<sup>16</sup>

60. Defendants also concluded that the revised investment lineup allowed the Plan to “[l]everage MIT’s institutional purchasing power to offer both passively and actively managed options **at the best possible cost for participants**”, and in some cases, provide funds “**in a better share class with lower fees**”.<sup>17</sup>

61. Defendants reiterated these principles during an “Administrative & Fiscal Officers Meeting”. The “[r]ationale for a streamlined line-up” was described as follows:

#### **Fund Monitoring**

More intensive review is **consistent with emerging regulatory and judicial standards**

#### **Investment Costs**

**Consolidation of assets into fewer funds can lead to lower investment costs**

#### **Participant Experience**

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<sup>15</sup> An ERISA fiduciary’s duty, which is the “highest known to the law”, did not only recently come into existence. *Bierwirth*, 680 F.2d at 272 n.8. Defendants were always held to that standard.

<sup>16</sup> MIT 2015 401(k) Investment Transition Guide, at 3 (emphasis added).

<sup>17</sup> *Id.* at 4 and 9 (emphasis added).

A simplified line-up can facilitate **better decision-making**<sup>18</sup>

62. Again, it was noted that consolidation of the Plan's investment structure “[p]rovide[d] participants with **access to institutional funds** with lower costs than those available to the general public” and “**lower-cost funds**”.<sup>19</sup>

63. For the first time, apparently since the Plan's inception, Defendants set as a standard that they would select actively managed funds based on specific quantitative and qualitative factors as prudent investment managers do:

- Fees
- Fund size and size of fund management firm
- Consistency and length of tenure of fund managers
- Use of a strong, detailed, investment selection process
- Nature of the fund manager's investment selection process (e.g., fundamental vs. quantitative analysis)
- History of adhering to the investment selection process
- Past consistency in fund performance<sup>20</sup>

64. Passively managed funds would also be “evaluated based on fees and success in tracking benchmark indices”.<sup>21</sup>

65. Had Defendants conducted a prudent and loyal analysis of the Plan's investment options when they selected them effective April 1999 and done so throughout, including from 2010 forward, Plan participants would have avoided paying millions of dollars in unreasonable investment fees, many of them to Fidelity.

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<sup>18</sup> MIT Administrative & Fiscal Officers Meeting Presentation, at 8 (Nov. 19, 2014), available at [https://adminconnect.mit.edu/sites/default/files/documents/401\(k\).pdf](https://adminconnect.mit.edu/sites/default/files/documents/401(k).pdf).

<sup>19</sup> *Id.* at 11 (emphasis in original).

<sup>20</sup> *Id.* at 13.

<sup>21</sup> *Id.*

**V. Defendants failed to prudently consider or offer dramatically lower-cost investments that were available to the Plan.**

66. Nobel Prize winners in economics have concluded that virtually no investment manager consistently beats the market over time after fees are taken into account. “Properly measured, the average actively managed dollar must underperform the average passively managed dollar, net of costs.” William F. Sharpe, *The Arithmetic of Active Management*, 47 FIN. ANALYSTS J. 7, 8 (Jan./Feb. 1991);<sup>22</sup> Eugene F. Fama & Kenneth R. French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, 65 J. FIN. 1915, 1915 (2010) (“After costs...in terms of net returns to investors, active investment must be a negative sum game.”).

67. To the extent managers show any sustainable ability to beat the market, the outperformance is nearly always dwarfed by mutual fund expenses. Fama & French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, at 1931–34; see also Russ Wermers, *Mutual Fund Performance: An Empirical Decomposition into Stock-Picking Talent, Style, Transaction Costs, and Expenses*, 55 J. FIN. 1655, 1690 (2000) (“on a net-return level, the funds underperform broad market indexes by one percent per year”).

68. If an individual high-cost mutual fund exhibits market-beating performance over a short period of time, studies demonstrate that outperformance during a particular period is not predictive of whether a mutual fund will perform well in the future. Laurent Barras et al., *False Discoveries in Mutual Fund Performance: Measuring Luck in Estimated Alphas*, 65 J. FIN. 179, 181 (2010); Mark

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<sup>22</sup> Available at <http://www.cfapubs.org/doi/pdf/10.2469/faj.v47.n1.7>.

M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57, 57, 59 (1997)(measuring thirty-one years of mutual fund returns and concluding that “persistent differences in mutual fund expenses and transaction costs explain almost all of the predictability in mutual fund returns”). However, the *worst-performing* mutual funds show a strong, persistent tendency to continue their poor performance. Carhart, *On Persistence in Mutual Fund Performance*, at 57.

69. Accordingly, investment costs are of paramount importance to prudent investment selection, and a prudent fiduciary will not select higher-cost actively managed funds without a documented process to realistically conclude that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark index over time, net of investment expenses.

70. Moreover, jumbo retirement plans have massive bargaining power to negotiate low fees for investment management services.

The fiduciaries also must consider the size and purchasing power of their plan and select the share classes (or alternative investments) that a fiduciary who is knowledgeable about such matters would select under the circumstances. In other words, the ‘prevailing circumstances’—such as the size of the plan—are a part of a prudent decisionmaking process. The failure to understand the concepts and to know about the alternatives could be a costly fiduciary breach.

Fred Reish, *Class-ifying Mutual Funds*, PLANSPONSOR (Jan. 2011).<sup>23</sup>

71. Apart from the fact that a prudent fiduciary will carefully weigh whether an actively managed fund is likely to outperform an index over time, net of fees, academic and financial industry literature demonstrates that high expenses

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<sup>23</sup> Available at <http://www.plansponsor.com/MagazineArticle.aspx?id=6442476537>.

are not correlated with superior investment management. Indeed, funds with high fees on average perform worse than less expensive funds even on a *pre-fee basis*.

Javier Gil-Bazo & Pablo Ruiz-Verdu, *When Cheaper is Better: Fee Determination in the Market for Equity Mutual Funds*, 67 J. ECON. BEHAV. & ORG. 871, 873 (2009); see also Jill E. Fisch, *Rethinking the Regulation of Securities Intermediaries*, 158 U. PA. L. REV. 1961, 1993 (2010)(summarizing numerous studies showing that “the most consistent predictor of a fund’s return to investors is the fund’s expense ratio”).

[T]he empirical evidence implies that superior management is not priced through higher expense ratios. On the contrary, it appears that the effect of expenses on after-expense performance (even after controlling for funds’ observable characteristics) is more than one-to-one, which would imply that low-quality funds charge higher fees. Price and quality thus seem to be inversely related in the market for actively managed mutual funds.

Gil-Bazo & Ruiz-Verdu, *When Cheaper is Better*, at 883.

72. Defendants selected high-priced share classes of mutual funds, instead of *identical* share classes of those same mutual funds which were readily available to the Plan. Defendants also failed to adequately investigate and offer non-mutual fund alternatives, such as collective trusts and separately managed accounts, particularly when Defendants selected collective trusts for some investment options, but failed to do so for others. Holders of large pools of assets know that these investment vehicles are readily available to them and can be used for the same investment style and with the same portfolio manager, but are much less expensive. Each mutual fund in the Plan charged fees in excess of the rates that Defendants could have obtained for the Plan by using these comparable products.

**A. Excessive fees compared to lower-cost share classes of the Plan's identical mutual fund options.**

73. Lower-cost institutional share classes of mutual funds compared to retail shares are available to institutional investors, and far lower-cost share classes are available to jumbo investors like the Plan.

74. Even if a particular fund in a jumbo plan would not reach the threshold for institutional rates, minimum investment thresholds for institutional share classes are routinely waived by the investment provider if not reached by a single fund based on the retirement plan's total investment in the provider's platform. Therefore, it is commonly understood by investment managers of large pools of assets that, for a retirement plan of the Plan's size, if requested, the investment provider would make available lower-cost share classes for the Plan, if there were any fund which did not individually reach the threshold.

75. Despite these far lower-cost options, for the *exact same mutual fund option*, Defendants provided higher-cost share classes of identical mutual funds than were available to the Plan. For Fidelity funds in the Plan alone, identical funds were available in significantly lower-priced share classes, yet were not selected for years, and were identical in every other way except price since "K" share class Fidelity mutual funds are available expressly for retirement plans.

76. Lower-cost share class *identical* alternatives to the Plan's mutual funds are set forth below:

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Aberdeen US Equity (A) (GXXAX)	141 bps	Aberdeen US Equity (Instl) (GGLIX)	119 bps	18.49%
Alger Mid Cap Growth Institutional (I) (ALMRX)	112 bps	Alger Mid Cap Growth Institutional (Instl) (AGCIX)	95 bps	17.89%
AllianzGI NFJ Small-Cap Value (Adm) (PVADX)	105 bps	AllianzGI NFJ Small-Cap Value (Instl) (PSVIX)	80 bps	31.25%
AllianzGI NFJ Small-Cap Value (Adm) (PVADX)	102 bps	AllianzGI NFJ Small-Cap Value (R6) (ANFVX)	72 bps	41.67%
AllianzGI NFJ Small-Cap Value (Instl) (PSVIX)	77 bps	AllianzGI NFJ Small-Cap Value (R6) (ANFVX)	72 bps	6.94%
American Beacon Balanced (Inv) (AABPX)	93 bps	American Beacon Balanced (Instl) (AADBX)	58 bps	60.34%
American Beacon International Equity (Inv) (AAIPX)	107 bps	American Beacon International Equity (AMR) (AAIAAX)	46 bps	132.61%
American Beacon Large Cap Value (Inv) (AAGPX)	96 bps	American Beacon Large Cap Value (Instl) (AADEX)	59 bps	62.71%
American Beacon Short Term Bond (Inv) (AALPX)	67 bps	American Beacon Short Term Bond (Y) (ACOYX)	35 bps	91.43%
American Century Large Company Value (Inv) (ALVIX)	85 bps	American Century Large Company Value (Instl) (ALVSX)	65 bps	30.77%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
American Century Large Company Value (Inv) (ALVIX)	85 bps	American Century Large Company Value (R6) (ALVDX)	50 bps	70.00%
American Century Small Company (Inv) (ASQIX)	90 bps	American Century Small Company (Instl) (ASCQX)	70 bps	28.57%
American Century Ultra (Inv) (TWCUX)	100 bps	American Century Ultra (Instl) (TWUIX)	80 bps	25.00%
American Century Ultra (Inv) (TWCUX)	100 bps	American Century Ultra (R6) (AULDX)	65 bps	53.85%
AMG Managers Bond (Service) (MGFIX)	101 bps	AMG Managers Bond (Instl) (MGBIX)	91 bps	10.99%
AMG Managers Cadence Mid Cap (Adm) (MCMAX)	111 bps	AMG Managers Cadence Mid Cap (Instl) (MCMFX)	71 bps	56.34%
AMG Managers Cadence Mid Cap (Service) (MCMYX)	96 bps	AMG Managers Cadence Mid Cap (Instl) (MCMFX)	71 bps	35.21%
AMG Managers Special Equity (Service) (MGSEX)	148 bps	AMG Managers Special Equity (Instl) (MSEIX)	123 bps	20.33%
Ariel Appreciation (Inv) (CAAPX)	117 bps	Ariel Appreciation (Instl) (CAAIX)	99 bps	18.18%
Ariel (Inv) (ARGFX)	106 bps	Ariel (Instl) (ARAIX)	68 bps	55.88%
Artisan International (Inv) (ARTIX)	123 bps	Artisan International (Instl) (APHIX)	98 bps	25.51%
Artisan Mid Cap (Inv) (ARTMX)	123 bps	Artisan Mid Cap (Instl) (APHMX)	96 bps	28.13%
Baron Asset (BARAX)	132 bps	Baron Asset (Instl) (BARIX)	106 bps	24.53%
Baron Growth Retail (BGRFX)	132 bps	Baron Growth (Instl) (BGRIX)	106 bps	24.53%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Calvert Balanced Portfolio (A) (CSIFX)	123 bps	Calvert Balanced Portfolio (I) (CBAIX)	72 bps	70.83%
Calvert Capital Accumulation (A) (CCAFX)	176 bps	Calvert Capital Accumulation (I) (CCPIX)	86 bps	104.65%
Calvert Equity Portfolio (A) (CSIEX)	122 bps	Calvert Equity Portfolio (I) (CEYIX)	68 bps	79.41%
Calvert International Equity (A) (CWVGX)	180 bps	Calvert International Equity (I) (CWVIX)	106 bps	69.81%
Calvert Small Cap (A) (CCVAX)	169 bps	Calvert Small Cap (I) (CSVIX)	92 bps	83.70%
ClearBridge Value Trust (FI) (LMVFX)	107 bps	ClearBridge Value Trust (I) (LMNVX)	81 bps	32.10%
Columbia Acorn Select (Z) (ACTWX)	97 bps	Columbia Acorn Select (I) (CACIX)	92 bps	5.43%
Columbia Acorn USA (Z) (AUSAX)	100 bps	Columbia Acorn USA (I) (CAUIX)	94 bps	6.38%
Columbia Income Opportunities (Z) (CIOZX)	76 bps	Columbia Income Opportunities (Y) (CIOYX)	66 bps	15.15%
Columbia Small Cap Core (Z) (SMCEX)	105 bps	Columbia Small Cap Core (I) (CPOIX)	88 bps	19.32%
Columbia Small Cap Core (Z) (SMCEX)	111 bps	Columbia Small Cap Core (Y) (CPFRX)	88 bps	26.14%
Credit Suisse Large Cap Blend (A) (CFFAX)	130 bps	Credit Suisse Large Cap Blend (Common) (WFDCX)	95 bps	36.84%
CRM Mid Cap Value (Inv) (CRMMX)	103 bps	CRM Mid Cap Value (Instl) (CRIMX)	78 bps	32.05%
Deutsche Core Equity (S) (SCDGX )	66 bps	Deutsche Core Equity (Instl) (SUWIX)	50 bps	32.00%
Deutsche CROCI Equity Dividend (A) (KDHAX)	116 bps	Deutsche CROCI Equity Dividend (Instl) (KDHIX)	82 bps	41.46%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Deutsche CROCI International (S) (SCINX)	94 bps	Deutsche CROCI International (Instl) (SUIIX)	81 bps	16.05%
Deutsche Global Small Cap (S) (SGSCX)	130 bps	Deutsche Global Small Cap (Instl) (KGDIX)	113 bps	15.04%
Domini Social Equity (Inv) (DSEFX)	123 bps	Domini Social Equity (Instl) (DIEQX)	75 bps	64.00%
Dreyfus Equity Growth (A) (FRMAX)	125 bps	Dreyfus Equity Growth (Instl) (FRMRX)	100 bps	25.00%
Dreyfus Equity Growth (F) (FRMUX)	101 bps	Dreyfus Equity Growth (Instl) (FRMRX)	100 bps	1.00%
Dreyfus Lifetime Growth and Income Portfolio (Inv) (DGIIX)	136 bps	Dreyfus Lifetime Growth and Income Portfolio (Rest) (DGIRX)	102 bps	33.33%
Dreyfus Research Growth (A) (DWOAX)	136 bps	Dreyfus Research Growth (I) (DWOIX)	100 bps	36.00%
Dreyfus Research Growth (A) (DWOAX)	113 bps	Dreyfus Research Growth (Y) (DRYQX)	84 bps	34.52%
Dreyfus Research Growth (Z) (DREQX)	103 bps	Dreyfus Research Growth (I) (DWOIX)	91 bps	13.19%
Dreyfus Research Growth (Z) (DREQX)	94 bps	Dreyfus Research Growth (Y) (DRYQX)	84 bps	11.90%
Fidelity Balanced (FBALX)	61 bps	Fidelity Balanced (K) (FBAKX)	47 bps	29.79%
Fidelity Blue Chip Growth (FBGRX)	93 bps	Fidelity Blue Chip Growth (K) (FBGKX)	74 bps	25.68%
Fidelity Capital Appreciation (FDCAX)	86 bps	Fidelity Capital Appreciation (K) (FCAKX)	68 bps	26.47%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity China Region (FHKCX)	98 bps	Fidelity China Region (I) (FHKIX)	93 bps	5.38%
Fidelity Conservative Income Bond (FCONX)	40 bps	Fidelity Conservative Income Bond (Instl) (FCNVX)	30 bps	33.33%
Fidelity Contrafund (FCNTX)	91 bps	Fidelity Contrafund (K) (FCNKX)	78 bps	16.67%
Fidelity Disciplined Equity (FDEQX)	68 bps	Fidelity Disciplined Equity (K) (FDEKX)	51 bps	33.33%
Fidelity Diversified International (FDIVX)	96 bps	Fidelity Diversified International (K) (FDIKX)	77 bps	24.68%
Fidelity Dividend Growth (FDGFX)	92 bps	Fidelity Dividend Growth (K) (FDGKX)	71 bps	29.58%
Fidelity Emerging Europe, Middle East, Africa (EMEA) (FEMEX)	125 bps	Fidelity Emerging Europe, Middle East, Africa (EMEA) (I) (FIEMX)	119 bps	5.04%
Fidelity Emerging Markets (FEMKX)	109 bps	Fidelity Emerging Markets (K) (FKEMX)	84 bps	29.76%
Fidelity Equity Income II (FEQTX)	69 bps	Fidelity Equity Income II (K) (FETKX)	54 bps	27.78%
Fidelity Equity-Income (FEQIX)	74 bps	Fidelity Equity-Income (K) (FEIKX)	54 bps	37.04%
Fidelity Export & Multinational (FEXPX)	84 bps	Fidelity Export & Multinational (K) (FEXKX)	64 bps	31.25%
Fidelity Freedom 2000 (FFF BX)	51 bps	Fidelity Freedom K 2000 (FFKBX)	43 bps	18.60%
Fidelity Freedom 2005 (FFFVX)	64 bps	Fidelity Freedom K 2005 (FFKVX)	52 bps	23.08%
Fidelity Freedom 2010 (FFFCX)	67 bps	Fidelity Freedom K 2010 (FFKCX)	53 bps	26.42%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Freedom 2015 (FFVFX)	68 bps	Fidelity Freedom K 2015 (FKVFX)	54 bps	25.93%
Fidelity Freedom 2020 (FFFDX)	74 bps	Fidelity Freedom K 2020 (FFKDX)	57 bps	29.82%
Fidelity Freedom 2025 (FFTWX)	76 bps	Fidelity Freedom K 2025 (FKTWX)	59 bps	28.81%
Fidelity Freedom 2030 (FFFEX)	79 bps	Fidelity Freedom K 2030 (FFKEX)	61 bps	29.51%
Fidelity Freedom 2035 (FFTHX)	81 bps	Fidelity Freedom K 2035 (FKTHX)	61 bps	32.79%
Fidelity Freedom 2040 (FFF FX)	81 bps	Fidelity Freedom K 2040 (FFKFX)	62 bps	30.65%
Fidelity Freedom 2045 (FFFGX)	82 bps	Fidelity Freedom K 2045 (FFKGX)	62 bps	32.26%
Fidelity Freedom 2050 (FFFHX)	84 bps	Fidelity Freedom K 2050 (FFKHX)	63 bps	33.33%
Fidelity Freedom Income (FFFAX)	50 bps	Fidelity Freedom K Income (FFKAX)	42 bps	19.05%
Fidelity (FFIDX)	60 bps	Fidelity (K) (FFDKX)	43 bps	39.53%
Fidelity Global Commodity Stock (FFGCX)	109 bps	Fidelity Global Commodity Stock (I) (FFGIX)	107 bps	1.87%
Fidelity Growth & Income (FGRIX)	74 bps	Fidelity Growth & Income (K) (FGIKX)	53 bps	39.62%
Fidelity Growth Company (FDGRX)	89 bps	Fidelity Growth Company (K) (FGCKX)	72 bps	23.61%
Fidelity Growth Discovery (FDSVX)	75 bps	Fidelity Growth Discovery (K) (FGDKX)	52 bps	44.23%
Fidelity Growth Strategies (FDEGX)	77 bps	Fidelity Growth Strategies (K) (FAGKX)	51 bps	50.98%
Fidelity Independence (FDFFX)	92 bps	Fidelity Independence (K) (FDFKX)	77 bps	19.48%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity International Discovery (FIGRX)	100 bps	Fidelity International Discovery (K) (FIDKX)	79 bps	26.58%
Fidelity International Growth (FIGFX)	104 bps	Fidelity International Growth (Z) (FZAJX)	88 bps	18.18%
Fidelity International Real Estate (FIREX)	114 bps	Fidelity International Real Estate (Instl) (FIRIX)	109 bps	4.59%
Fidelity International Small Cap (FISMX)	142 bps	Fidelity International Small Cap (Instl) (FIXIX)	131 bps	8.40%
Fidelity International Small Cap Opportunities (FSCOX)	89 bps	Fidelity International Small Cap Opportunities (Instl) (FOPIX)	88 bps	1.14%
Fidelity Japan (FJPNX)	80 bps	Fidelity Japan (I) (FJPIX)	75 bps	6.67%
Fidelity Large Cap Growth (FSLGX)	86 bps	Fidelity Large Cap Growth (Instl) (FLNOX)	74 bps	16.22%
Fidelity Leveraged Company Stock (FLVCX)	88 bps	Fidelity Leveraged Company Stock (K) (FLCKX)	69 bps	27.54%
Fidelity Low-Priced Stock (FLPSX)	99 bps	Fidelity Low-Priced Stock (K) (FLPKX)	85 bps	16.47%
Fidelity Magellan (FMAGX)	74 bps	Fidelity Magellan (K) (FMGKX)	58 bps	27.59%
Fidelity Mega Cap Stock (FGRTX)	68 bps	Fidelity Mega Cap Stock (Z) (FZALX)	54 bps	25.93%
Fidelity Mid Cap Growth (FSMGX)	70 bps	Fidelity Mid Cap Growth (Instl) (FGCOX)	59 bps	18.64%
Fidelity Mid-Cap Stock (FMCSX)	64 bps	Fidelity Mid-Cap Stock (Z) (FKMCX)	41 bps	56.10%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity OTC (FOCPX)	104 bps	Fidelity OTC (K) (FOCKX)	88 bps	18.18%
Fidelity Overseas (FOSFX)	85 bps	Fidelity Overseas (K) (FOSKX)	66 bps	28.79%
Fidelity Puritan (FPURX)	61 bps	Fidelity Puritan (K) (FPUKX)	47 bps	29.79%
Fidelity Real Estate Income (FRIFX)	92 bps	Fidelity Real Estate Income (I) (FRIRX)	89 bps	3.37%
Fidelity Select Gold (FSAGX)	94 bps	Fidelity Select Gold (I) (FGDIX)	91 bps	3.30%
Fidelity Select Materials (FSDPX)	94 bps	Fidelity Select Materials (I) (FMFEX)	93 bps	1.08%
Fidelity Spartan 500 Index (Instl) (FXSIX)	5 bps	Fidelity Spartan 500 Index Adv (Instl) (FXAIX)	3 bps	66.67%
Fidelity Spartan 500 Index (Inv) (FUSEX)	10 bps	Fidelity Spartan 500 Index (Adv) (FUSVX)	7 bps	42.86%
Fidelity Spartan Emerging Markets Index (Adv) (FPMAX)	22 bps	Fidelity Spartan Emerging Markets Index (Adv Instl) (FPADX)	12 bps	83.33%
Fidelity Spartan Extended Market Index (Adv) (FSEVX)	7 bps	Fidelity Spartan Extended Market Index (Adv Instl) (FSMAX)	6 bps	16.67%
Fidelity Spartan Global ex-US Index (Adv) (FSGDX)	18 bps	Fidelity Spartan Global ex-US Index (Adv Instl) (FSGGX)	10 bps	80.00%
Fidelity Spartan Inflation-Protected Index (Adv) (FSIYX)	10 bps	Fidelity Spartan Inflation-Protected Index (Adv Instl) (FIPDX)	5 bps	100.00%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity Spartan International Index (Adv) (FSIVX )	7 bps	Fidelity Spartan International Index (Adv Instl) (FSPSX)	6 bps	16.67%
Fidelity Spartan International Index (Inv) (FSIIX)	10 bps	Fidelity Spartan International Index (Adv) (FSIVX)	7 bps	42.86%
Fidelity Spartan Long Term Treasury Bond Index (Inv) (FLBIX)	20 bps	Fidelity Spartan Long Term Treasury Bond Index (Adv) (FLBAX)	10 bps	100.00%
Fidelity Spartan Mid Cap Index (Adv) (FSCKX)	12 bps	Fidelity Spartan Mid Cap Index (Adv Instl) (FSMDX)	6 bps	100.00%
Fidelity Spartan Real Estate Index (Adv) (FSRVX)	12 bps	Fidelity Spartan Real Estate Index (Instl) (FSRNX)	7 bps	71.43%
Fidelity Spartan Short Term Treasury Bond Index (Inv) (FSBIX)	20 bps	Fidelity Spartan Short Term Treasury Bond Index (Adv) (FSBAX)	10 bps	100.00%
Fidelity Spartan Small Cap Index (Adv) (FSSVX)	17 bps	Fidelity Spartan Small Cap Index (Adv Instl) (FSSNX)	11 bps	54.55%
Fidelity Spartan Total Market Index (Adv) (FSTVX)	7 bps	Fidelity Spartan Total Market Index (Adv Instl) (FSKAX)	5 bps	40.00%
Fidelity Spartan Total Market Index (Inv) (FSTMX)	10 bps	Fidelity Spartan Total Market Index (Adv) (FSTVX)	7 bps	42.86%
Fidelity Spartan US Bond Index (Instl) (FXSTX)	7 bps	Fidelity Spartan US Bond Index (Adv Instl) (FXNAX)	5 bps	40.00%
Fidelity Stock Selector Small Cap (FDSCX)	72 bps	Fidelity Stock Selector Small Cap (I) (FCDIX)	62 bps	16.13%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Fidelity Stock Selector All Cap (FDSSX)	86 bps	Fidelity Stock Selector All Cap (K) (FSSKX)	66 bps	30.30%
Fidelity Value (FDVLX)	63 bps	Fidelity Value (K) (FVLKX)	46 bps	36.96%
Fidelity Value Discovery (FVDFX)	95 bps	Fidelity Value Discovery (K) (FVDKX)	74 bps	28.38%
Fidelity Value Strategies (FSLSX)	80 bps	Fidelity Value Strategies (K) (FVSKX)	56 bps	42.86%
Franklin Mutual Shares (A) (TESIX)	115 bps	Franklin Mutual Shares (Z) (MUTHX)	85 bps	35.29%
Franklin Mutual Shares (A) (TESIX)	109 bps	Franklin Mutual Shares (R6) (FMSHX)	67 bps	62.69%
Franklin Small Mid Cap Growth (A) (FRSGX)	104 bps	Franklin Small Mid Cap Growth (Adv) (FSGAX)	79 bps	31.65%
Franklin Small Mid Cap Growth (A) (FRSGX)	96 bps	Franklin Small Mid Cap Growth (R6) (FMGGX)	47 bps	104.26%
Invesco Basic Balanced (A) (BBLAX)	119 bps	Invesco Basic Balanced (Y) (BBLYX)	94 bps	26.60%
Invesco Basic Balanced (Inv) (BBLTX)	117 bps	Invesco Basic Balanced (Y) (BBLYX)	94 bps	24.47%
Invesco Basic Value (A) (GTVLX)	134 bps	Invesco Basic Value (Instl) (GTVVX)	82 bps	63.41%
Invesco Charter (A) (CHTRX)	114 bps	Invesco Charter (R5) (CHTVX)	71 bps	60.56%
Invesco Charter (A) (CHTRX)	105 bps	Invesco Charter (R6) (CHFTX)	63 bps	66.67%
Invesco Constellation (A) (CSTGX)	132 bps	Invesco Constellation (R5) (CSITX)	76 bps	73.68%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Invesco Diversified Dividend (Inv) (LCEIX)	92 bps	Invesco Diversified Dividend (R5) (DDFIX)	64 bps	43.75%
Invesco Diversified Dividend (Inv) (LCEIX)	86 bps	Invesco Diversified Dividend (R6) (LCEFX)	48 bps	79.17%
Invesco Dynamics (Inv) (FIDYX)	112 bps	Invesco Dynamics (R5) (IDICX)	67 bps	67.16%
Invesco Global Small & Mid Cap Growth (A) (AGAAX)	145 bps	Invesco Global Small & Mid Cap Growth (R5) (GAIIX)	92 bps	57.61%
Invesco Large Cap Growth (A) (LCGAX)	141 bps	Invesco Large Cap Growth (Instl) (LCIGX)	75 bps	88.00%
Invesco Large Cap Relative Value (A) (IVABX)	91 bps	Invesco Large Cap Relative Value (Y) (MSIVX)	66 bps	37.88%
Invesco Mid Cap Core Equity (A) (GTAGX)	118 bps	Invesco Mid Cap Core Equity (R5) (GTAVX)	76 bps	55.26%
Invesco Mid Cap Core Equity (A) (GTAGX)	116 bps	Invesco Mid Cap Core Equity (R6) (GTAFX)	72 bps	61.11%
Invesco Mid Cap Growth (A) (VGRAX)	129 bps	Invesco Mid Cap Growth (R5) (VGRJX)	84 bps	53.57%
Invesco Mid Cap Growth (A) (VGRAX)	116 bps	Invesco Mid Cap Growth (R6) (VGRFX)	73 bps	58.90%
Invesco Small Cap Growth (Inv) (GTSIX)	125 bps	Invesco Small Cap Growth (R5) (GTSVX)	82 bps	52.44%
Invesco Small Cap Growth (Inv) (GTSIX)	121 bps	Invesco Small Cap Growth (R6) (GTSFX)	74 bps	63.51%
Invesco Value II (A) (MPVAX)	95 bps	Invesco Value II (Y) (MPVLX)	70 bps	35.71%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Invesco Van Kampen American Franchise (A) (VAFAX)	106 bps	Invesco Van Kampen American Franchise (R5) (VAFNX)	66 bps	60.61%
Invesco Van Kampen American Franchise (A) (VAFAX)	106 bps	Invesco Van Kampen American Franchise (R6) (VAFFX)	65 bps	63.08%
Invesco Van Kampen Comstock (A) (ACSTX)	84 bps	Invesco Van Kampen Comstock (R5) (ACSHX)	36 bps	133.33%
Invesco Van Kampen Comstock (A) (ACSTX)	86 bps	Invesco Van Kampen Comstock (R6) (ICSFX)	41 bps	109.76%
Invesco Van Kampen Equity and Income (A) (ACEIX)	81 bps	Invesco Van Kampen Equity and Income (R5) (ACEKX)	39 bps	107.69%
Invesco Van Kampen Equity and Income (A) (ACEIX)	78 bps	Invesco Van Kampen Equity and Income (R6) (IEIFX)	37 bps	110.81%
Invesco Van Kampen Growth and Income (A) (ACGIX)	74 bps	Invesco Van Kampen Growth and Income (R5) (ACGQX)	45 bps	64.44%
Invesco Van Kampen Growth and Income (A) (ACGIX)	81 bps	Invesco Van Kampen Growth and Income (R6) (GIFFX)	38 bps	113.16%
Invesco Van Kampen Value Opportunities (A) (VVOAX)	142 bps	Invesco Van Kampen Value Opportunities (Y) (VVOIX)	117 bps	21.37%
Invesco Van Kampen Value Opportunities (A) (VVOAX)	140 bps	Invesco Van Kampen Value Opportunities (R5) (VVONX)	81 bps	72.84%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Janus Balanced (S) (JABRX)	109 bps	Janus Balanced (I) (JBALX )	65 bps	67.69%
Janus Enterprise (S) (JGRTX)	122 bps	Janus Enterprise (I) (JMGRX)	74 bps	64.86%
Janus Enterprise (S) (JGRTX)	117 bps	Janus Enterprise (N) (JDMNX)	68 bps	72.06%
Janus Flexible Bond (T) (JAFIX)	66 bps	Janus Flexible Bond (I) (JFLEX)	55 bps	20.00%
Janus Flexible Bond (T) (JAFIX)	69 bps	Janus Flexible Bond (N) (JDFNX)	46 bps	50.00%
Janus Forty (S) (JARTX)	120 bps	Janus Forty (I) (JCAPX)	77 bps	55.84%
Janus Forty (S) (JARTX)	100 bps	Janus Forty (N) (JFRNX)	52 bps	92.31%
Janus Global Research S Shares (JWGRX)	107 bps	Janus Global Research I Shares (JWWFX)	72 bps	48.61%
Janus Worldwide (S) (JWGRX)	145 bps	Janus Worldwide (I) (JWWFX)	96 bps	51.04%
JHancock Small Company (A) (JCSAX)	134 bps	JHancock Small Company (R5) (JCSVX)	110 bps	21.82%
JHancock Small Company (A) (JCSAX)	144 bps	JHancock Small Company (R6) (JCSWX)	104 bps	38.46%
Legg Mason Capital Management Value Trust, Inc. (FI) (CSTGX)	103 bps	Legg Mason Capital Management Value Trust, Inc. (I) (LMNVX)	78 bps	32.05%
Lord Abbett Mid Cap Value (A) (LAVLX)	115 bps	Lord Abbett Mid Cap Value (I) (LMCYX)	80 bps	43.75%
Morgan Stanley Institutional Capital Growth (P) (MSEGX)	98 bps	Morgan Stanley Institutional Capital Growth (I) (MSEQX)	73 bps	34.25%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Morgan Stanley Institutional Core Plus Fixed Income Portfolio (P) (MFXAX)	76 bps	Morgan Stanley Institutional Core Plus Fixed Income Portfolio (Instl) (MPFIX)	51 bps	49.02%
Morgan Stanley Institutional Emerging Markets (P) (MMK BX)	172 bps	Morgan Stanley Institutional Emerging Markets (I) (MGEMX)	147 bps	17.01%
Morgan Stanley Institutional Emerging Markets (P) (MMK BX)	157 bps	Morgan Stanley Institutional Emerging Markets (IS) (MMMPX)	118 bps	33.05%
Morgan Stanley Institutional Fund Trust Balanced Portfolio (P) (MABIX)	114 bps	Morgan Stanley Institutional Fund Trust Balanced Portfolio (I) (MPBAX)	67 bps	70.15%
Morgan Stanley Institutional Fund, Inc. Active International Allocation Portfolio (P) (MSIBX)	104 bps	Morgan Stanley Institutional Fund, Inc. Active International Allocation Portfolio (I) (MSACX)	79 bps	31.65%
Morgan Stanley Institutional Fund, Inc. International Equity Portfolio (P) (MIQBX)	120 bps	Morgan Stanley Institutional Fund, Inc. International Equity Portfolio (Instl) (MSIQX)	95 bps	26.32%
Morgan Stanley Institutional Fund, Inc. International Equity Portfolio (P) (MIQBX)	130 bps	Morgan Stanley Institutional Fund, Inc. International Equity Portfolio (IS) (MIQPX)	91 bps	42.86%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Morgan Stanley Institutional Global Strategist Portfolio (P) (MBAAX)	162 bps	Morgan Stanley Institutional Global Strategist Portfolio (I) (MPBAX)	135 bps	20.00%
Morgan Stanley Institutional Growth (A) (MSEGX)	96 bps	Morgan Stanley Institutional Growth (I) (MSEQX)	71 bps	35.21%
Morgan Stanley Institutional Growth (A) (MSEGX)	83 bps	Morgan Stanley Institutional Growth (IS) (MGRPX)	54 bps	53.70%
Morgan Stanley Institutional Mid Cap Growth (P) (MACGX)	93 bps	Morgan Stanley Institutional Mid Cap Growth (I) (MPEGX)	68 bps	36.76%
Morgan Stanley Institutional Mid Cap Growth (P) (MACGX)	100 bps	Morgan Stanley Institutional Mid Cap Growth (IS) (MMCGX)	61 bps	63.93%
Morgan Stanley Institutional Small Company Growth Fund (P) (MSSMX)	130 bps	Morgan Stanley Institutional Small Company Growth Fund (I) (MSSGX)	105 bps	23.81%
Morgan Stanley Institutional Small Company Growth Fund (P) (MSSMX)	138 bps	Morgan Stanley Institutional Small Company Growth Fund (IS) (MFLLX)	97 bps	42.27%
Neuberger Berman Core Bond Fund (Inv) (NCRIX)	85 bps	Neuberger Berman Core Bond Fund (Instl) (NCRLX)	45 bps	88.89%
Neuberger Berman Focus (Trust) (NBFCX)	119 bps	Neuberger Berman Focus (Instl) (NFALX)	75 bps	58.67%
Neuberger Berman Genesis (Trust) (NBGEX)	112 bps	Neuberger Berman Genesis (R6) (NBGIX)	85 bps	31.76%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Neuberger Berman Genesis (Trust) (NBGEX)	110 bps	Neuberger Berman Genesis (Instl) (NRGSX)	78 bps	41.03%
Neuberger Berman Guardian (Trust) (NBGTX)	112 bps	Neuberger Berman Guardian (Instl) (NGDLX)	75 bps	49.33%
Neuberger Berman Lehman Brothers Core Bond (Inv) (NCRIX)	85 bps	Neuberger Berman Lehman Brothers Core Bond (Instl) (NCRLX)	45 bps	88.89%
Neuberger Berman Mid Cap Growth (Trust) (NBMTX)	114 bps	Neuberger Berman Mid Cap Growth (Instl) (NBMLX)	75 bps	52.00%
Neuberger Berman Mid Cap Growth (Trust) (NBMTX)	104 bps	Neuberger Berman Mid Cap Growth (R6) (NRMGX)	68 bps	52.94%
Neuberger Berman Partners (Trust) (NBPTX)	103 bps	Neuberger Berman Partners (Instl) (NBPIX)	69 bps	49.28%
Neuberger Berman Socially Responsive (Trust) (NBSTX )	112 bps	Neuberger Berman Socially Responsive (Instl) (NBSLX )	75 bps	49.33%
Neuberger Berman Socially Responsive (Trust) (NBSTX )	103 bps	Neuberger Berman Socially Responsive (R6) (NRSRX )	60 bps	71.67%
Old Mutual Focused (Z) (OBFVX)	95 bps	Old Mutual Focused (Instl) (OIFCX)	80 bps	18.75%
Old Mutual Strategic Small Company (Z) (OSSCX)	130 bps	Old Mutual Strategic Small Company (Instl) (OISSX)	105 bps	23.81%
Perkins Mid Cap Value (T) (JMCVX)	103 bps	Perkins Mid Cap Value (D) (JNM CX)	93 bps	10.75%
Perkins Mid Cap Value (T) (JMCVX)	83 bps	Perkins Mid Cap Value (N) (JDPNX)	58 bps	43.10%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
PIMCO Global Bond (Adm) (PADMX)	80 bps	PIMCO Global Bond (Instl) (PIGLX)	55 bps	45.45%
PIMCO High Yield (Adm) (PHYAX)	80 bps	PIMCO High Yield (Instl) (PHIYX)	55 bps	45.45%
PIMCO Long Term U.S. Government (Adm) (PLGBX)	73 bps	PIMCO Long Term U.S. Government (Instl) (PGOVX)	48 bps	52.08%
PIMCO Low Duration (Adm) (PLDAX)	71 bps	PIMCO Low Duration (Instl) (PTLDX)	46 bps	54.35%
PIMCO Total Return (Adm) (PTRAX)	71 bps	PIMCO Total Return (Instl) (PTTRX)	46 bps	54.35%
Royce Low-Priced Stock (Service) (RYLPX)	149 bps	Royce Low-Priced Stock (Instl) (RLPIX)	118 bps	26.27%
RS Small Cap Growth (A) (RSEGX)	135 bps	RS Small Cap Growth (Y) (RSYEX)	98 bps	37.76%
Strategic Advisers Core Multi-Manager (FLAUX)	96 bps	Strategic Advisers Core Multi-Manager (F) (FHJSX)	86 bps	11.63%
Strategic Advisers Small Mid Cap Multi-Manager (FNAPX)	116 bps	Strategic Advisers Small Mid Cap Multi-Manager (F) (FARMX)	106 bps	9.43%
Strategic Advisers Value Multi-Manager (FKMOX)	97 bps	Strategic Advisers Value Multi-Manager (F) (FGWBX)	87 bps	11.49%
TCW Select Equities (N) (TGCNX)	124 bps	TCW Select Equities (I) (TGCEX)	92 bps	34.78%
TCW Small Cap Growth (N) (TGSNX)	151 bps	TCW Small Cap Growth (I) (TGSCX)	111.9 bps	34.94%
Templeton Developing Markets (A) (TEDMX )	184 bps	Templeton Developing Markets (Advisor) (TDADX )	156 bps	17.95%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Templeton Developing Markets (A) (TEDMX)	172 bps	Templeton Developing Markets (R6) (FDEVX)	126 bps	36.51%
Templeton Foreign (A) (TEMFX)	119 bps	Templeton Foreign (Advisor) (TFFAX)	94 bps	26.60%
Templeton Foreign (A) (TEMFX)	119 bps	Templeton Foreign (R6) (FTFGX)	74 bps	60.81%
Templeton Foreign Smaller Companies (A) (FINEX)	159 bps	Templeton Foreign Smaller Companies (Advisor) (FTFAX)	134 bps	18.66%
Templeton Foreign Smaller Companies (A) (FINEX)	165 bps	Templeton Foreign Smaller Companies (R6)	112 bps	47.32%
Templeton Global Bond (A) (TPINX)	91 bps	Templeton Global Bond (Advisor) (TGBAX)	66 bps	37.88%
Templeton Global Bond (A) (TPINX)	86 bps	Templeton Global Bond (R6) (FBNRX)	51 bps	68.63%
Templeton Growth Fund, Inc. (A) (TEPLX)	110 bps	Templeton Growth Fund, Inc. (Advisor) (TGADX)	85 bps	29.41%
Templeton Growth Fund, Inc. (A) (TEPLX)	107 bps	Templeton Growth Fund, Inc. (R6) (FTGFX)	71 bps	50.70%
Templeton World (A) (TEMWX)	109 bps	Templeton World (Advisor) (TWDAX)	84 bps	29.76%
Templeton World (A) (TEMWX)	105 bps	Templeton World (R6) (FTWRX)	72 bps	45.83%
Touchstone Focused (Y) (TFFYX)	95 bps	Touchstone Focused (Instl) (TFFIX)	80 bps	18.75%
Touchstone International Small Cap (Y) (TNSYX)	130 bps	Touchstone International Small Cap (Instl) (TNSIX)	105 bps	23.81%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
USAA Emerging Markets (USEMX)	164 bps	USAA Emerging Markets (Instl) (UIEMX)	113 bps	45.13%
USAA Growth (USAAX)	100 bps	USAA Growth (Instl) (UIGRX)	87 bps	14.94%
USAA Income (USAIX)	61 bps	USAA Income (Instl) (UIINX)	38 bps	60.53%
USAA Income Stock (USISX)	82 bps	USAA Income Stock (Instl) (UIISX)	62 bps	32.26%
USAA International (USIFX)	123 bps	USAA International (Instl) (UIIFX)	87 bps	41.38%
Vanguard FTSE All-World ex-US Index (Inv) (VFWIX)	35 bps	Vanguard FTSE All-World ex-US Index (Instl) (VFWSX)	15 bps	133.33%
Vanguard Growth Index (Adm) (VIGAX)	9 bps	Vanguard Growth Index (Instl) (VIGIX)	8 bps	12.50%
Vanguard Growth Index (Signal) (VIGSX)	12 bps	Vanguard Growth Index (Instl) (VIGIX)	8 bps	50.00%
Vanguard Institutional Index (Instl) (VINIX)	5 bps	Vanguard Institutional Index (Instl Plus) (VIIIX)	2 bps	150.00%
Vanguard Total International Stock Index (Signal) (VTSGX)	18 bps	Vanguard Total International Stock Index (Instl Plus) (VTPSX)	10 bps	80.00%
Vanguard Total Stock Market Index (Instl) (VITSX)	5 bps	Vanguard Total Stock Market Index (Instl Plus) (VITPX)	2 bps	150.00%
Vanguard Value Index (Adm) (VVIAX)	9 bps	Vanguard Value Index (Instl) (VIVIX)	8 bps	12.50%
Vanguard Value Index (Signal) (VVISX)	14 bps	Vanguard Value Index (Instl) (VIVIX)	8 bps	75.00%

<b>Plan Mutual Fund</b>	<b>Plan Fee</b>	<b>Identical Lower-Cost Mutual Fund</b>	<b>Identical Lower-Cost Mutual Fund Fee</b>	<b>Plan's Excess Cost</b>
Wells Fargo Advantage Common Stock (Inv) (STCSX)	129 bps	Wells Fargo Advantage Common Stock (R6) (SCNSX)	87 bps	48.28%
Wells Fargo Advantage Common Stock (Inv) (SCSAX)	126 bps	Wells Fargo Advantage Common Stock (Instl) (SCSRX)	80 bps	57.50%
Wells Fargo Advantage Discovery (Inv) (STDIX)	138 bps	Wells Fargo Advantage Discovery (Instl) (WFDSX)	93 bps	48.39%
Wells Fargo Advantage Government Securities (Inv) (STVSX)	91 bps	Wells Fargo Advantage Government Securities (Instl) (SGVIX)	48 bps	89.58%
Wells Fargo Advantage Growth (Inv) (SGROX)	140 bps	Wells Fargo Advantage Growth (Instl) (SGRNX)	80 bps	75.00%
Wells Fargo Advantage Large Cap Growth (Inv) (STRFX)	119 bps	Wells Fargo Advantage Large Cap Growth (Instl) (STNFX)	75 bps	58.67%
Wells Fargo Advantage Large Cap Growth (Inv) (STRFX)	113 bps	Wells Fargo Advantage Large Cap Growth (R6) (STFFX)	60 bps	88.33%
Wells Fargo Advantage Opportunity (Inv) (SOPFX)	135 bps	Wells Fargo Advantage Opportunity (Adm) (WOFDX)	104 bps	29.81%
Wells Fargo Advantage Opportunity (Inv) (SOPFX)	132 bps	Wells Fargo Advantage Opportunity (Instl) (WOFNX)	78 bps	69.23%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Wells Fargo Advantage Short-Term Bond (Inv) (SSTBX)	85 bps	Wells Fargo Advantage Short-Term Bond (Instl) (SSHIX)	48 bps	77.08%
Wells Fargo Advantage Small Cap Value (Inv) (SSMVX)	135 bps	Wells Fargo Advantage Small Cap Value (Instl) (WFSVX)	93 bps	45.16%
Wells Fargo Advantage Small Cap Value (Inv) (SSMVX)	133 bps	Wells Fargo Advantage Small Cap Value (R6) (SMVRX)	85 bps	56.47%
Wells Fargo Advantage Ultra Short Income (Inv) (STADX)	75 bps	Wells Fargo Advantage Ultra Short Income (Instl) (SADIX)	35 bps	114.29%
Western Asset Core Bond (FI) (WAPIX)	75 bps	Western Asset Core Bond (IS) (WACSX)	44 bps	70.45%

77. These lower-cost share classes of the identical mutual funds for the Plan have been available for years, some dating back to the early 2000s or before.

78. The failure to select lower-cost share classes for the Plan's mutual fund options *identical in all respects* (portfolio manager, underlying investments, and asset allocation) *except for cost*, demonstrates that Defendants failed to consider the size and purchasing power of the Plan when selecting share classes and failed to engage in a prudent process in the selection, monitoring, and retention of those mutual fund options.

79. Had the amounts invested in the higher-cost share class mutual fund options instead been invested in the readily available lower-cost share class mutual fund options, Plan participants would not have lost millions of dollars of their retirement savings.

**B. Excessive fees compared to separate accounts.**

80. Massive retirement plans are not limited to choosing mutual funds as investment options. Such plans, including those with assets over \$500 million, can hire investment advisers directly to manage separate accounts tailored for the plan within plan-specific investment parameters and separately negotiated, low fees and can even use the same investment managers as mutual funds with the same investment style in a separate account set up for the plan. Use of such accounts greatly reduces the cost of investing with the same adviser compared to a mutual fund.

81. According to the United States Department of Labor, separate accounts, which require a minimum investment of \$15 million to \$25 million per account, can “commonly” reduce “[t]otal investment management expenses” to “*one-fourth of the expenses incurred through retail mutual funds.*” U.S. Dep’t of Labor, *Study of 401(k) Plan Fees and Expenses*, §2.4.1.3 (Apr. 13, 1998)(emphasis added).<sup>24</sup>

82. The Plan had assets of billions of dollars at all relevant times, and over \$3.8 billion as of December 31, 2014. Thus, the Plan had ample assets to enable Defendants to provide separate account alternatives to the mutual funds it provided

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<sup>24</sup> On the Department of Labor’s website at <http://www.dol.gov/ebsa/pdf/401krept.pdf>.

in the Plan, particularly after they consolidated the Plan's assets in 2015 into a core set of investment offerings.

83. Separate accounts have numerous advantages over mutual funds in a 401(k) plan. These include: the ability to negotiate lower fees; ability to avoid marketing fees built into retail mutual funds; control by the fiduciaries over investment guidelines; tailored investments to fit the demographics of the work force; and ability to avoid holding significant cash for shareholder redemptions that occur much more frequently in retail mutual funds than in retirement accounts.<sup>25</sup> In a mutual fund, all investors are charged the same fee, and investors have no ability to modify the fund's investment guidelines, which are set by the fund's investment adviser. In a separate account, the plan sponsor can negotiate the best possible fee for the plan, using its bargaining power.

84. Following the 2015 fund lineup changes, Defendants selected several actively managed mutual fund options. Some of these investment managers also offer low-cost separately managed accounts. For instance, for the DFA Emerging Markets Equity Fund (DFCEX), the same manager, Dimensional Fund Advisors LP, offers separate accounts in the same international equity investment strategy at significantly lower costs.<sup>26</sup> In addition, for the Dodge & Cox Stock Fund (DODGX),

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<sup>25</sup> Unlike mutual fund shareholders, 401(k) participants rarely make trades in their account—less than one trade per year. Olivia Mitchell, Gary Mottola, Stephen Utkus, and Takeshi Yamaguchi, *The Inattentive Participant: Portfolio Trading Behaviors in 401(k) Plans*, at 17–18 (June 2006), available at <http://www.mrrc.isr.umich.edu/publications/Papers/pdf/wp115.pdf>.

<sup>26</sup> See Dimensional Fund Advisors LP Form ADV, available at [http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=376508](http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=376508).

the identical manager, Dodge & Cox, similarly offers significantly lower-cost separately managed accounts for U.S. equity investment strategies.<sup>27</sup>

85. Fidelity also offers separately managed accounts to institutional investors. Fidelity Institutional Asset Management (formerly Pyramis Global Advisors, LLC, an affiliate of Fidelity) offers lower-cost separate accounts in domestic equities, international equities, fixed income, asset allocation, and real estate investment strategies.<sup>28</sup>

86. The above-referenced separate accounts offered by the Plan's mutual fund advisers only represent a fraction of separate accounts that were available to the Plan in similar investment styles, both in 2015 and to date, as well as prior to 2010. Other investment management firms offered separate accounts in the same investment styles at a much lower cost than the Plan's mutual funds.

87. Defendants' failure to select separate accounts for the Plan's investments instead of retail and institutional share class mutual funds caused Plan participants to lose millions of dollars of their retirement savings due to unreasonable expenses from 2010 to date.

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<sup>27</sup> See Dodge & Cox Form ADV, available at [http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=376765](http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=376765).

<sup>28</sup> See FIAM LLC Form ADV, available at [http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=388324](http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=388324); Fidelity Investment Asset Management, *DCIO Overview*, available at <https://pyramis.fidelity.com/app/p/us/defined-contribution>.

**C. Excessive fees compared to collective trusts or commingled pools.**

88. Collective trusts or commingled pools also provide much lower investment management fees than the Plan's mutual funds, and in some instances, separate accounts. Collective trusts are a common investment vehicle in large 401(k) plans, and are accessible even to midsize plans with plan assets in an amount which is a small fraction—less than 3%—of the size of the Plan. Collective trusts are pooled investment vehicles organized as trusts and maintained by a bank or trust company. These investments combine assets from eligible investors into a single investment portfolio with a specific investment strategy. Given that the Plan held billions of dollars in assets since 2010, collective trusts were readily available to the Plan.

89. Collective trusts are widely used investment vehicles for defined contribution plans due to recordkeeper acceptance, plan investment consultant familiarity with such products, pricing flexibility, daily valuation, and improved reporting and transparency.

90. Numerous established third-party investment managers offer low-cost collective trust investments in the same investment categories and styles as the Plan's mutual funds at a fraction of the cost. These reputable managers include BlackRock, State Street Global Advisors, and Vanguard Fiduciary Trust Company, among others.

91. For instance, Vanguard offers low-cost collective trust funds to qualified retirement plans in several asset styles, including large cap domestic equities, small cap equities, international equities, and target date funds.

92. Since at least 2010, Defendants included Vanguard's target date funds known as the Target Retirement Trust II Funds in the Plan. Although those funds were collective trusts, Defendants could have provided participants lower-cost versions of these same collectives trusts in the Retirement Trust Plus series since at least August 2011. The Target Date Retirement Trust II Funds charged at least 36% more in annual fees than the Retirement Trust Plus Funds (7 bps vs. 11 bps). However, Defendants did not begin providing participants the Trust Plus Funds until 2015. Moreover, the Vanguard collective trust target date funds charged far lower fees than the other target date funds in the Plan, the Fidelity Freedom Funds, which charged between 39 and 84 bps before they were removed in July 2015. In fact, at the time of removal, the Fidelity Freedom Funds charged between 614% and 529% in excess fees compared to the Vanguard equivalents. See *supra* ¶52.

93. Moreover, Fidelity offers *identical* commingled pools for several of its mutual fund options, including for the Fidelity Diversified International Fund, the Fidelity Low-Priced Stock Fund, the Fidelity Growth Company Fund, and the Fidelity Contrafund. Fidelity Institutional Asset Management also offers commingled pools to institutional investors in a variety of investment strategies. These commingled pools have significantly lower costs than the Plan's Fidelity

mutual fund options. For instance, the Fidelity Growth Company Commingled Pool, with an expense ratio of 43 bps, has 65% lower fees compared to the Plan's mutual fund version with an expense ratio of 71 bps.

94. Had Defendants adequately considered and selected lower-cost collective trusts or commingled pools that were readily available based on the Plan's massive size for the Plan's mutual fund investments, Plan participants would have avoided millions of dollars in unreasonable investment management expenses.

**VI. In order to maintain Fidelity's and the Johnson family's beneficial relationship with MIT, Defendants caused Plan participants to pay excessive administrative and recordkeeping fees in violation of ERISA's requirement that fees be reasonable.**

95. Recordkeeping is a service necessary for every defined contribution plan. The market for recordkeeping services is highly competitive. There are numerous recordkeepers in the marketplace who are equally capable of providing a high level of service to a large defined contribution plan like the Plan. These recordkeepers primarily differentiate themselves based on price, and vigorously compete for business by offering the best price.

96. To ensure that plan administrative and recordkeeping expenses are and remain reasonable for the services provided, prudent fiduciaries of large defined contribution plans put the plan's recordkeeping and administrative services out for competitive bidding at regular intervals of approximately three years.

97. The cost of recordkeeping services depends on the number of participants, not on the amount of assets in the participant's account. Thus, the cost of providing recordkeeping services to a participant with a \$50,000 account balance

is the same for a participant with \$5,000 in her retirement account. For this reason, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis of a fixed dollar amount for each participant in the plan rather than as a percentage of plan assets. Otherwise, as plan assets increase through participant contributions or investment gains, the recordkeeping compensation increases without any change in the recordkeeping and administrative services.

98. Jumbo defined contribution plans, like the Plan, experience economies of scale for recordkeeping and administrative services. As the number of participants in the plan increases, the per-participant fee charged for recordkeeping and administrative services declines. These lower administrative expenses are readily available for plans with a greater number of participants.

99. Some investments engage in a practice known as revenue sharing. In a revenue sharing arrangement, a mutual fund or other investment vehicle directs a portion of the expense ratio—the asset-based fees it charges to investors—to the plan's recordkeeper putatively for providing recordkeeping and administrative services for the investment. Because revenue sharing arrangements provide asset-based fees, prudent fiduciaries, if they use asset-based fees to pay for recordkeeping, must monitor the total amount of revenue sharing a recordkeeper receives to ensure that the recordkeeper is not receiving unreasonable compensation.<sup>29</sup> A prudent fiduciary must ensure that the recordkeeper rebates to the plan all revenue sharing payments that exceed a reasonable, negotiated recordkeeping fee. Because revenue

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<sup>29</sup> For example, if the market goes up 32% as it did in 2013, as measured by the return of the S&P 500, or if a participant adds to her balance, the fees paid for recordkeeping would go up as well, with no additional services.

sharing payments are asset-based, they often bear no relation to a reasonable recordkeeping fee and can provide excessive compensation, or may be used as kickbacks to induce recordkeepers to have their high-priced funds included as plan investment options.

100. As previously noted, Fidelity has provided administrative and recordkeeping services to the Plan since at least 1999. Fidelity provided these services while its owners directly benefited MIT through substantial monetary contributions. Moreover, Fidelity remained the recordkeeper during the time Fidelity's CEO, Abigail Johnson, has served on the MIT's Board of Trustees and influenced decisions made by MIT. Defendants also failed to obtain competitive bids for Fidelity's services to ensure that only reasonable fees were charged to the Plan during this time.

101. Fidelity was and is compensated based on direct payments from the Plan and revenue sharing payments from the Plan's investment options. Fidelity received between 3 and 55 bps in revenue sharing from the Fidelity, as well as from the non-Fidelity, mutual fund options.

102. Fidelity received additional indirect compensation, including float, revenue derived from securities lending, distribution fees, and redemption fees.

103. Based on the Plan's features, the nature of the administrative services provided by the Plan's recordkeepers, the Plan's participant level (roughly 16,000 to 18,000), and the recordkeeping market, the outside limit of a reasonable

recordkeeping fee for the Plan would have been a fixed \$575,000 to \$640,000 (or \$35 per participant with an account balance).

104. Based on the direct and indirect compensation levels shown on the Plan's Form 5500s filed with the Department of Labor, and on the revenue share allocated to Fidelity for recordkeeping services, the Plan paid as much as \$3 million (up to \$170 per participant) per year from 2010 to 2014, over 386% higher than a reasonable fee for these services, resulting in millions of dollars in excessive recordkeeping fees.

105. Defendants also failed to control recordkeeping costs as Plan assets grew. From the beginning of 2009 to the end of 2014, the Plan's assets increased from \$2.02 billion to over \$3.8 billion, an increase of *88 percent*. Because revenue sharing payments are asset based, the already excessive compensation paid to Fidelity became even more excessive as the Plan's assets grew, even though the administrative services provided to the Plan remained the same. Defendants could have and should have obtained flat per-participant bids, or capped the amount of revenue sharing to ensure that all amounts above a reasonable fee for recordkeeping services were returned to the Plan as other plans do, but failed to do so.

106. Upon information and belief, in order to secure Fidelity's and its owners' beneficial relationship with MIT, Defendants also failed to conduct a competitive bidding process for the Plan's recordkeeping services for over *16 years* since Fidelity was selected. A competitive bidding process for the Plan's

recordkeeping services would have produced a reasonable recordkeeping fee for the Plan. This competitive bidding process would have enabled Defendants to select a recordkeeper charging reasonable fees, to obtain a reduction in recordkeeping fees, and to rebate any excess expenses paid by participants for recordkeeping services.

107. Defendants failed to prudently monitor and control the compensation paid for recordkeeping and administrative services, particularly the asset-based revenue sharing received by Fidelity, and therefore caused the Plan participants to pay unreasonable expenses for administering the Plan. Had Defendants monitored the compensation paid to Fidelity and ensured that participants were only charged reasonable fees for administrative and recordkeeping services, Plan participants would not have lost in excess of \$12 million of their retirement savings through unreasonable recordkeeping fees.<sup>30</sup>

### **ERISA'S FIDUCIARY STANDARDS**

108. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendants as fiduciaries of the Plan. 29 U.S.C. §1104(a), states, in relevant part, that:

[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

- (A) for the exclusive purpose of
  - (i) providing benefits to participants and their beneficiaries; and
  - (ii) defraying reasonable expenses of administering the plan;

[and]

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<sup>30</sup> Plan losses have been brought forward to the present value using the investment returns of the S&P 500 index to compensate participants who have not been reimbursed for their losses.

- (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

109. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and solely in the interest of participants in the plan.

110. The general duties of loyalty and prudence imposed by 29 U.S.C. §1104 are supplemented by a detailed list of transactions that are expressly prohibited by 29 U.S.C. §1106, and are considered “*per se*” violations because they entail a high potential for abuse. Section 1106(a)(1) states, in pertinent part, that:

[A] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect –

- (A) sale or exchange, or leasing, of any property between the plan and a party in interest;  
\* \* \*
- (C) furnishing of goods, services, or facilities between the plan and party in interest;
- (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan...

Section 1106(b) provides, in pertinent part, that:

[A] fiduciary with respect to the plan shall not –

- (1) deal with the assets of the plan in his own interest or for his own account,
- (2) in his individual or in any other capacity act in a transaction involving the plan on behalf of a party (or represent a party)

whose interests are adverse to the interest of the plan or the interest of its participants or beneficiaries, or

- (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

111. Under 29 U.S.C. §1103(c)(1), with certain exceptions not relevant here,

the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

112. ERISA also imposes explicit co-fiduciary liabilities on plan fiduciaries.

29 U.S.C. §1105(a) provides a cause of action against a fiduciary for knowingly participating in a breach by another fiduciary and knowingly failing to cure any breach of duty. The statute states, in relevant part, that:

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; [or]
- (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
- (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

113. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil action to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109. Section 1109(a) provides in relevant part:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

114. 29 U.S.C. §1132(a)(3) provides a cause of action against a non-fiduciary "party in interest" who knowingly participates in prohibited transactions or knowingly receives payments made in breach of a fiduciary's duty, and authorizes "appropriate equitable relief" such as restitution or disgorgement to recover ill-gotten proceeds from the non-fiduciary.

### **CLASS ACTION ALLEGATIONS**

115. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. §1109(a).

116. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. §1132(a)(2) and (3), Plaintiffs seek to certify this action as a class action on behalf of

all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be appointed as representatives of, the following class:

All participants and beneficiaries of the MIT Supplemental 401(k) Plan from August 9, 2010, through the date of judgment, excluding the Defendants.

117. This action meets the requirements of Rule 23 and is certifiable as a class action for the following reasons:

- a. The Class includes over 18,000 members and is so large that joinder of all its members is impracticable.
- b. There are questions of law and fact common to the Class because the Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries and took the actions and omissions alleged herein as to the Plan and not as to any individual participant. Thus, common questions of law and fact include the following, without limitation: who are the fiduciaries liable for the remedies provided by 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan; what are the losses to the Plan resulting from each breach of fiduciary duty; and what Plan-wide equitable and other relief the court should impose in light of Defendants' breach of duty.
- c. Plaintiffs' claims are typical of the claims of the Class because each Plaintiff was a participant during the time period at issue in this action and all participants in the Plan were harmed by Defendants' misconduct.

d. Plaintiffs are adequate representatives of the Class because they were participants in the Plan during the Class period, have no interest that is in conflict with the Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent attorneys to represent the Class.

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (A) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants in respect to the discharge of their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries not parties to the adjudication or would substantially impair or impede those participants' and beneficiaries' ability to protect their interests. Therefore, this action should be certified as a class action under Rule 23(b)(1)(A) or (B).

118. A class action is the superior method for the fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable, the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights through individual actions, and the common questions of law and fact predominate

over individual questions. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter, and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action. Alternatively, then, this action may be certified as a class under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).

119. Plaintiffs' counsel, Schlichter, Bogard & Denton LLP, will fairly and adequately represent the interests of the Class and is best able to represent the interests of the Class under Rule 23(g).

a. Schlichter, Bogard & Denton has been appointed as class counsel in 15 other ERISA class actions regarding excessive fees in large defined contribution plans. As a district court in one of those cases recently observed: "the firm of Schlichter, Bogard & Denton ha[s] demonstrated its well-earned reputation as a pioneer and the leader in the field". *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206 at 4 (S.D. Ill. July 17, 2015). Other courts have made similar findings: "It is clear to the Court that the firm of Schlichter, Bogard & Denton is preeminent in the field" "and is the only firm which has invested such massive resources in this area." *George v. Kraft Foods Global, Inc.*, No. 08-3799, 2012 U.S.Dist.LEXIS 166816 at 8 (N.D. Ill. June 26, 2012). "As the preeminent firm in 401(k) fee litigation, Schlichter, Bogard & Denton has achieved unparalleled results on behalf of its clients." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S.Dist.LEXIS 184622 at 8 (C.D. Ill. Oct. 15, 2013). "Litigating this case against formidable

defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination.” *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S.Dist.LEXIS 12037 at 8 (S.D. Ill. Jan. 31, 2014).

b. The U.S. District Court Judge G. Patrick Murphy recognized the work of Schlichter, Bogard & Denton as exceptional:

Schlichter, Bogard & Denton’s work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees. No case had previously been brought by either the Department of Labor or private attorneys against large employers for excessive fees in a 401(k) plan. Class Counsel performed substantial work..., investigating the facts, examining documents, and consulting and paying experts to determine whether it was viable. This case has been pending since September 11, 2006. Litigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.

*Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S.Dist.LEXIS 123349 at 8–9 (S.D. Ill. Nov. 22, 2010).

c. Schlichter, Bogard & Denton handled the only full trial of an ERISA excessive fee case, resulting in a \$36.9 million judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, 746 F.3d 327 (8th Cir. 2014). In awarding attorney’s fees after trial, the district court concluded that “Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.LEXIS 157428 at 10 (W.D. Mo. Nov. 2, 2012). Following remand, the district court again awarded Plaintiffs’ attorney’s fees, emphasizing the significant

contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in retirement plans.

Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

*Tussey v. ABB, Inc.*, 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D. Mo. Dec. 9, 2015).

d. Schlichter, Bogard & Denton is also class counsel in and handled *Tibble v. Edison Int'l*, in which the Supreme Court held in a unanimous 9–0 decision that ERISA fiduciaries have “a continuing duty to monitor investments and remove imprudent ones[.]” 135 S. Ct. at 1829. Schlichter, Bogard & Denton successfully petitioned for a writ of certiorari and obtained amicus support from the United States Solicitor General and AARP, among others. Given the Court’s broad recognition of an ongoing fiduciary duty, the *Tibble* decision will affect all ERISA defined contribution plans.

e. The firm’s work in ERISA excessive fee class actions has been featured in the New York Times, Wall Street Journal, NPR, Reuters, and Bloomberg, among other media outlets. See, e.g., Anne Tergesen, *401(k) Fees, Already Low, Are Heading Lower*, WALL ST. J. (May 15, 2016);<sup>31</sup> Gretchen

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<sup>31</sup> Available at <http://www.wsj.com/articles/401-k-fees-already-low-are-heading-lower-1463304601>.

Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. TIMES (Mar. 29, 2014);<sup>32</sup> Liz Moyer, *High Court Spotlight Put on 401(k) Plans*, WALL ST. J. (Feb. 23, 2015);<sup>33</sup> Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. TIMES (Oct. 16, 2014);<sup>34</sup> Sara Randazzo, *Plaintiffs' Lawyer Takes on Retirement Plans*, WALL ST. J. (Aug. 25, 2015);<sup>35</sup> Jess Bravin and Liz Moyer, *High Court Ruling Adds Protections for Investors in 401(k) Plans*, WALL ST. J. (May 18, 2015);<sup>36</sup> Jim Zarroli, *Lockheed Martin Case Puts 401(k) Plans on Trial*, NPR (Dec. 15, 2014);<sup>37</sup> Mark Miller, *Are 401(k) Fees Too High? The High-Court May Have an Opinion*, REUTERS (May 1, 2014);<sup>38</sup> Greg Stohr, *401(k) Fees at Issue as Court Takes Edison Worker Appeal*, BLOOMBERG (Oct. 2, 2014).<sup>39</sup>

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<sup>32</sup> Available at [http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?\\_r=0](http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0).

<sup>33</sup> Available at <http://www.wsj.com/articles/high-court-spotlight-put-on-401-k-plans-1424716527>.

<sup>34</sup> Available at [http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?\\_r=0](http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0).

<sup>35</sup> Available at <http://blogs.wsj.com/law/2015/08/25/plaintiffs-lawyer-takes-on-retirement-plans/>.

<sup>36</sup> Available at <http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139>.

<sup>37</sup> Available at <http://www.npr.org/2014/12/15/370794942/lockheed-martin-case-puts-401-k-plans-on-trial>.

<sup>38</sup> Available at <http://www.reuters.com/article/us-column-miller-401fees-idUSBREA400J220140501>.

<sup>39</sup> Available at <http://www.bloomberg.com/news/articles/2014-10-02/401-k-fees-at-issue-as-court-takes-edison-worker-appeal>.

## COUNT I

### **Breach of Duties of Loyalty and Prudence— Unreasonable Investment Management Fees and Performance Losses**

120. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs.

121. This Count alleges breach of fiduciary duties against all Defendants.

122. The scope of the fiduciary duties and responsibilities of these Defendants includes managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. These Defendants are directly responsible for ensuring that the Plan's fees are reasonable, selecting prudent investment options, evaluating and monitoring the Plan's investments on an ongoing basis and eliminating imprudent ones, and taking all necessary steps to ensure that the Plan's assets are invested prudently.

123. As the Supreme Court recently confirmed, ERISA's "duty of prudence involves a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble*, 135 S. Ct. at 1829.

124. Defendants selected and retained for years Plan investment options with unreasonable expenses and poor performance relative to other investment options that were readily available to the Plan.

125. Rather than consolidating the Plan's over 340 investment options, most of them Fidelity funds, into a core investment lineup in which prudent

investments were selected for a given asset class and investment style, as is the case with most defined contribution plans, Defendants retained multiple investment options in each asset class and investment style, thereby depriving the Plan of its ability to qualify for lower cost investments, while violating the well-known principle for fiduciaries that such a high number of investment options causes participant confusion. In addition, Defendants, as fiduciaries charged with operating as prudent financial experts, *Katsaros v. Cody*, 744 F.2d 270, 279 (2d Cir. 1984), knew or should have known that providing numerous actively managed duplicative funds in the same investment style would produce a “shadow index” return before accounting for much higher fees than index fund fees, thereby resulting in significant underperformance. Moreover, Defendants selected and retained duplicative and/or unnecessary investment options in small cap domestic equities, mid cap domestic equities, large cap domestic equities, sector funds, and international specialty funds that suffered from high cost and poor performance relative to lower-cost investment alternatives that were readily available and appropriate plan investment alternatives for this jumbo 401(k) plan. Even after Defendants’ actions taken in 2015, Defendants failed to adequately consider and select lower-cost and better performing collective trusts or separate accounts for those mutual fund options that were selected or retained in the Plan, costing Plan participants substantial losses.

126. The Plan’s investment offerings included the use of mutual funds and higher-cost share class collective trusts with expense ratios far in excess of other

options available to the Plan. These lower-cost options included separate accounts, collective trusts, and institutional share class mutual funds. In so doing, Defendants failed to make Plan investment decisions based solely on the merits of the investment funds and what was in the interest of participants. Defendants therefore failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan. Defendants therefore breached their fiduciary duty of loyalty under 29 U.S.C. §1104(a)(1)(A).

127. The same conduct by the Defendants shows a failure to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. Defendants therefore breached their fiduciary duty of prudence under 29 U.S.C. §1104(a)(1)(B).

128. Total Plan losses will be determined at trial after complete discovery in this case and are continuing.

129. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate.

130. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

## **COUNT II**

### **Breach of Duties of Loyalty and Prudence— Unreasonable Administrative Fees**

131. Plaintiffs restate and incorporate the allegations in the preceding paragraphs.

132. This Count alleges breach of fiduciary duties against all Defendants.

133. The scope of the fiduciary duties and responsibilities of these Defendants includes discharging their duties with respect to the Plan solely in the interest of, and for the exclusive purpose of providing benefits to, Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, prudence, and diligence required by ERISA.

134. If a defined contribution plan overpays for recordkeeping services due to the fiduciaries’ “failure to solicit bids” from other recordkeepers, the fiduciaries have breached their duty of prudence. See *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 798–99 (7th Cir. 2011). Similarly, “us[ing] revenue sharing to benefit [the plan sponsor and recordkeeper] at the Plan’s expense” while “failing to monitor and

control recordkeeping fees" and "paying excessive revenue sharing" is a breach of fiduciary duties. *Tussey*, 746 F.3d at 336.

135. Defendants failed to engage in a prudent and loyal process for selecting and retaining Fidelity as the Plan's recordkeeper to benefit themselves. Defendants failed to solicit competitive bids from vendors on a flat per-participant fee. Defendants allowed Fidelity to receive asset-based revenue sharing and other fees, but failed to monitor those payments to ensure that only reasonable compensation was received for the services provided to the Plan. As the amount of assets grew, the revenue sharing payments to Fidelity grew, even though the services provided by Fidelity remained the same. This caused the recordkeeping compensation paid to Fidelity to exceed and continues to exceed a reasonable fee for the services provided. This conduct was a breach of the duties of loyalty and prudence.

136. Total Plan losses will be determined at trial after complete discovery in this case and are continuing.

137. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate.

138. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under

the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

### **COUNT III**

#### **29 U.S.C. §1106(a)—Prohibited Transactions Between Plan and Party in Interest**

139. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs.

140. This Count alleges prohibited transactions against all Defendants.

141. All Defendants were involved in causing the Plan to use Fidelity as the Plan's recordkeeper.

142. Fidelity is a party in interest because it is an entity providing services to the Plan.

143. By causing the Plan to use Fidelity as the Plan's recordkeeper and trustee, and in turn, allowing Fidelity to receive unreasonable compensation through direct payments from the Plan and revenue sharing payments from the Plan's Fidelity and non-Fidelity investments, Defendants caused the Plan to engage in a transaction that they knew or should have known constituted an exchange of property between the Plan and a party in interest in violation of 29 U.S.C. §1106(a)(1)(A).

144. By causing the Plan to use Fidelity as the Plan's recordkeeper and trustee for unreasonable compensation, Defendants caused the Plan to engage in a transaction they knew or should have known constituted the furnishing of services between the Plan and a party in interest in violation of 29 U.S.C. §1106(a)(1)(C).

145. By causing the Plan to use Fidelity as the Plan's recordkeeper and trustee, and in turn, allowing Fidelity to receive unreasonable compensation through direct payments from the Plan and revenue sharing payments from the Plan's Fidelity and non-Fidelity investments, Defendants caused the Plan to engage in a transaction they knew or should have known constituted a transfer of Plan assets to a party in interest in violation of 29 U.S.C. §1106(a)(1)(D).

146. All of these transactions provided a direct benefit to Defendants and Fidelity. By selecting and retaining Fidelity to serve as the Plan's recordkeeper and including *over 150* Fidelity investment options in the Plan, Defendants drove substantial revenue from Plan participants' retirement savings to Fidelity and the Johnson family, while MIT received significant donations from Fidelity and the Johnson family.

147. Under 29 U.S.C. §1109(a), Defendants are liable to restore all losses suffered by the Plan as a result of these prohibited transactions and to disgorge or provide restitution of all revenues received by Fidelity and their subsidiaries from the fees and revenue sharing payments paid by the Plan to these entities, as well as other appropriate equitable or remedial relief.

#### **COUNT IV**

##### **Failure to Monitor Fiduciaries**

148. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs.

149. This Count alleges breach of fiduciary duties against MIT.

150. MIT has the ultimate responsibility to control and manage the operation and administration of the Plan, with all powers necessary to enable it properly to carry out such responsibilities. The President of MIT has the authority to appoint members of the Oversight Committee, which is responsible for the selection, monitoring, and retention of Plan investment options.

151. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

152. To the extent any of MIT's fiduciary responsibilities were delegated to another fiduciary, its monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

153. MIT breached its fiduciary monitoring duties by, among other things:

- a. failing to monitor its appointees, to evaluate their performance, or to have a system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of its appointees' imprudent actions and omissions with respect to the Plan;
- b. failing to monitor its appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the excessive administrative and investment management fees in violation of ERISA;
- c. failing to ensure that the monitored fiduciaries had a prudent process in place for evaluating the Plan's administrative fees and ensuring that the

fees were competitive, including a process to identify and determine the amount of all sources of compensation to the Plan's recordkeeper and the amount of any revenue sharing payments; a process to prevent the recordkeeper from receiving revenue sharing that would increase the recordkeeper's compensation to unreasonable levels even though the services provided remained the same; and a process to periodically obtain competitive bids to determine the market rate for the services provided to the Plan;

d. failing to ensure that the monitored fiduciaries considered the ready availability of comparable and better performing investment options that charged significantly lower fees and expenses than the Plan's investments; and

e. failing to remove appointees whose performance was inadequate in that they continued to maintain imprudent, excessively costly, and poorly performing investments, all to the detriment of Plan participants' retirement savings.

154. As a consequence of these breaches of the fiduciary duty to monitor, the Plan suffered substantial losses. Had MIT discharged its fiduciary monitoring duties prudently as described above, the Plan would not have suffered these losses. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and the Plaintiffs and the other Class members, lost tens of millions of dollars of their retirement savings.

## **JURY TRIAL DEMANDED**

155. Pursuant to Fed.R.Civ.P. 38 and the Constitution of the United States, Plaintiffs demand a trial by jury.

## **PRAYER FOR RELIEF**

For these reasons, Plaintiffs, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully request that the Court:

- find and declare that Defendants have breached their fiduciary duties as described above;
- find and declare that Defendants committed prohibited transactions;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each breach of fiduciary duty, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- determine the method by which Plan losses under 29 U.S.C. §1109(a) should be calculated;
- order Defendants to provide all accountings necessary to determine the amounts Defendants must make good to the Plan under §1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;
- reform the Plan to include only prudent investments;

- reform the Plan to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses;
- certify the Class, appoint each of the Plaintiffs as a class representative, and appoint Schlichter, Bogard & Denton LLP as Class Counsel;
- award to the Plaintiffs and the Class their attorney's fees and costs under 29 U.S.C. §1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and
- grant other equitable or remedial relief as the Court deems appropriate.

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